122-639

Supreme Court of the United States of America

Oct Term 1884

No 821 496

ABNER GAINES, as Collector, and GEORGE T. WILKINSON, as Clerk of Chicot County, Arkansas,

Plaintiffs in Error,

No

vs.

AUSTIN CORBIN, J. K. O. SHERWOOD, E. H. SHIRK, C. E. LEWIS, F. B. LOOMIS and CHAS. R. BISSELL,

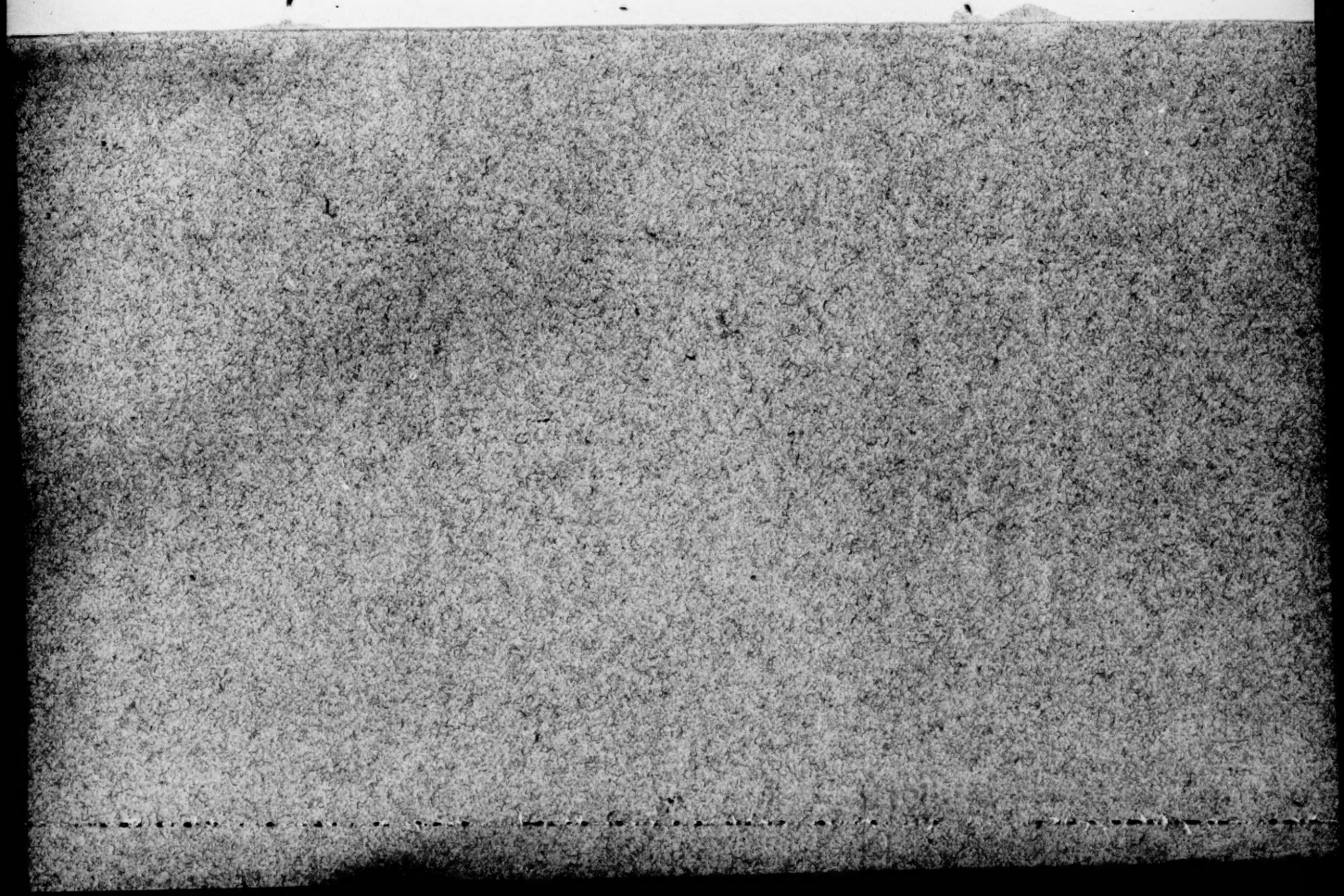
Defendants in Error.

In Error to the Circuit Court of the United States for the Eastern District of Arkansas.

RECORD.

Filed Feby 11th 1885

LITTLE ROCK:
UNION PRINTING COMPANY, LAW PRINTERS.
1885.



In the Supreme Court of the United States
OF AMERICA.

ABNER GAINES, as Collector, and GEORGE T. WILKINSON, as Clerk of Chicot County, Arkansas,

No. —. v.

AUSTIN CORBIN, J. K. O. SHERWOOD, E. H. SHIRK, C. D. LEWIS, F. B. LOOMIS, and CHARLES R. BISSELL, *Defendants in Error.*

In Error to the Circuit Court of the United States for the Eastern District of Arkansas.

INDEX.

Writ of Error 1
Caption 2
Relation for rule to show cause 3–12
Return of Marshal on rule 18
Response of G. T. Wilkinson, as Clerk of Chicot County 19–20
Response of A. Gaines, Collector, etc 21–26
Exhibit to Response of Gaines 26–42
Exhibit "E" to Response of Gaines 43–46
Supersedeas Bond 62–64
Citation 66
Clerk's Certificate 66

RECORD ENTRIES.

Order for rule on Collector and Clerk of Chicot County 13–19
Responses of Gaines and Wilkinson held for naught, and Exceptions of Respondents filed 47–50
Supersedeas Bond and Writ of Error filed 51
Respondents' exceptions to ruling of the Court, and amount of Supersedeas Bond fixed at $3,000 52–61

[1] UNITED STATES OF AMERICA—SS.

THE PRESIDENT OF THE UNITED STATES OF AMERICA,
To the Honorable the Judges of the Circuit Court of the United States, for the Eastern District of Arkansas—Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, wherein Austin Corbin, J. K. O. Sherwood, E. H. Shirk, C. E. Lewis, F. B. Loomis and Charles R. Bissell are relators, and Abner Gaines, as Collector of Chicot County, Arkansas, and George T. Wilkinson, Clerk of the County Court of said County, are respondents, and wherein, by the consideration of said Court, the said respondents were required to proceed to collect certain taxes levied on the taxable property within the County of Chicot, in the State of Arkansas, to satisfy the relators' judgments against said county a manifest error hath happened, to the great damage of the said Abner Gaines, as Collector, and George T. Wilkinson, Clerk of said County of Chicot, as by their complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the records and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the laws and custom of the United States ought to be done.

Witness, the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this sixteenth day of January, in the year of our [SEAL.] Lord, one thousand eight hundred and eighty-five, and of the independence of the United States one hundred and ninth.

RALPH L. GOODRICH,
Clerk of the Circuit Court of the United States of America, for the Eastern District of Arkansas.

Allowed by HENRY C. CALDWELL, District Judge.

The execution of the foregoing writ of error appears from the schedule hereto attached.

RALPH L. GOODRICH, CLERK.

[2] Be it remembered that on the twenty-third day of December A. D. 1884, came into the office of the Clerk of the Circuit Court of the United States, Austin Corbin et al., by B. C. Brown, E. W. Kimball and Charles P. Redmond, Esqs., and filed therein a relation for rule to show cause against Abner Gaines, Collector, and George T. Wilkinson, Clerk of the County Court of Chicot County, Arkansas, which relation is in the words and figures following, to wit:

[3] CIRCUIT COURT OF THE UNITED STATES,

EASTERN DISTRICT OF ARKANSAS.

The United States ex rel. Austin Corbin, J. K. O. Sherwood, E. H. Shirk, C. E. Lewis, F. B. Loomis and C. R. Bissell, for themselves and others in like case interested,

v.

Abner Gaines, as Collector of Chicot County, Arkansas, and George T. Wilkinson, Clerk of the County Court of said county.

The relators state and show to this court that, by the consideration and judgment of this Honorable Court, they have each recovered, at different times, a number of judgments against Chicot County, Arkansas, amounting in the aggregate to many thousand dollars, which judgments were all based upon coupons taken from bonds issued by said County of Chicot under the provisions of an act of

[4] the State of Arkansas, passed and approved July 23, 1868, entitled "An act to authorize counties to subscribe stock in railroads," a list of which judgments, with their dates and amounts, will be hereto attached should it become necessary or be required.

Relators further show that in the month of May, 1884, several writs of mandamus issued out of this Honorable Court, and under the seal thereof, directed to the County Court of Chicot County, Arkansas, commanding said County Court, under the provisions of said act, to levy a sufficient tax for the year 1884 to pay each and all of said judgments; that after the issue of said writs of mandamus, by the consent of relators and by and with the consent and approval of this Honorable Court, it was agreed that if the County Court of Chicot County, aforesaid, would levy

[5] a tax for the year 1884 of twenty mills upon the property of said county, and collect the same, said tax to be distributed *pro rata* among the judgments so recovered by your relators and others against said County

of Chicot in this Honorable Court, that such levy, collection and distribution would be accepted by the relators and other judgment creditors as sufficient compliance, by said County Court, with the commands of the said writs of mandamus, —— copies of which writs of mandamus are hereto attached.

Relators further show that they are informed and believe that the County Court of Chicot County obeyed the said writs of mandamus in accordance with the agreement before mentioned, and did levy a special tax of twenty mills upon the dollar upon all the taxable property
[6] of said county, under the provisions of the act aforesaid, to be applied to the payment, *pro rata*, of the said judgments.

They further show that they are informed, and believe, that said special tax was by the clerk of said County Court duly and properly extended upon the tax books; that said tax books, with said tax extended thereon, was in due form of law and apt time delivered to Abner Gaines, the collector of taxes of said County of Chicot, and it thereupon became his duty, under the laws, to give obedience to the said writs of mandamus, to collect said tax at the time when all other taxes are collected, and to pay the same into this Honorable Court for distribution upon said judgments.

Relators further state that they are informed, and believe, that the said Abner Gaines, as Collector of said county of Chicot, has refused and neglected to collect
[7] said twenty mills tax; that he collects and receives other taxes levied by the County Court at the same time and by the same tax levy from the tax-payers of Chicot County, and wholly fails to collect the amount of tax so, as aforesaid, levied by the said County Court for the payment of relators' judgments and the other judgments rendered by this court against said county of Chicot.

Relators further show that they fear from past experience and the dilatory proceedings that have heretofore been had in this Honorable Court to avoid the collection of taxes levied under the orders and process of this court by the officers and tax-payers of said county, that the clerk of said County Court will fail and neglect to perform some of his duties in relation to the collection of said taxes and the sales of property delinquent for said twenty mill tax.
[8] And they fear said collector will neglect to distrain for personal property and sell real estate delinquent for said twenty mill tax.

But are willing that said Abner Gaines, collector of said county, and George T. Wilkinson, Clerk of the said County Court, may be heard, to show cause, if any they have, why they and each of them should not be commanded to do each, all, every and singular, their duties under the laws in relation to the collection of said twenty mill tax, the advertisement, publishing sale, and distraint of real and personal property delinquent for failure to pay said tax, and the recording, reporting and certifying all matters and things required to be done by law in relation to said tax.

Relators therefore pray that a rule be made and served upon said Abner Gaines, Collector as aforesaid, and George T. Wilkinson, Clerk of said County Court of Chicot
[9] County, requiring them and each of them, at an early day to be therein named, to appear before this Honorable Court and respectively show cause, if any they have, why they and each of them should not be commanded to do and perform each, all and every thing and duty required of them by law in regard to the collection of said twenty mill tax, the advertisement, distraint and sale of personal and real property for delinquency thereon, the recording, listing, reporting and certifying, and each, all and every matter and thing required of them by law to be done in relation to said twenty mill tax.

And that said George T. Wilkinson, Clerk of the County Court of Chicot County, Arkansas, be required to show cause why he should not be commanded that he do and perform, in the proper manner and at the proper
[10] time, all and singular and each and every act and thing by law required to be done in respect of taxation for said twenty mill tax, the same as to other and general taxes levied for the year 1884. And particularly in respect to the advertisement and publication and recording of the list of lands delinquent for said twenty mill tax; and in regard to his attendance at the sale of lands delinquent for said taxes of 1884, and in regard to recording the proceedings of said sale; and as to the certification of a copy of the list of delinquent lands to the Auditor of State; and in regard to the making settlement with the collector as prescribed in section 167 of the last revenue law of the State of Arkansas, and the presentation of said settlement to the County Court of said county.

And that said Abner Gaines, collector as afore-
[11] said, show cause why he should not be commanded to collect the said special tax of twenty mills, levied

as aforesaid for the year 1884, and to distrain, list, advertise and sell personal property delinquent for said twenty mill tax, and to make and file with the Clerk of the County Court his report of delinquent taxpayers for failure to pay said twenty mill tax on their personal property as required by law; and to file with the Clerk of said County Court the list of real property delinquent for failure to pay said twenty mill tax, and to offer for sale all lands and real property delinquent for said twenty mill tax, and strike off the same as required by law, all to be done at the time and in the manner required by law; and to take, each and every and all and singular, the pro-
[12] cess and proceedings, and to do and perform each and every act and thing imposed upon him by law in respect to the enforcement and collection of taxes, the same in respect to said twenty mill tax as to other and general taxes at the time and in the manner provided by law.

And your petitioners and relators pray for such other and further relief in the premises as it is proper for the court to grant, and their case may demand.

C. P. Redmond,
B. C. Brown,
E. W. Kimball,
Counsel for Relators.

C. P. Redmond, being duly sworn, says that he believes the statements of the foregoing relation are true.

C. P. Redmond.

Subscribed and sworn to before me this twenty-third day of December, 1884.

Ralph L. Goodrich, Clerk,
By W. P. Field, D. C.

Indorsed: Filed December 23, 1884.
Ralph L. Goodrich, Clerk.

[13] UNITED STATES OF AMERICA,
Eastern District of Arkansas.

Be it remembered that at a Circuit Court of the United States of America, in and for the Eastern District of Arkansas, begun and holden on Monday, the twenty-seventh day of October, Anno Domini one thousand eight hundred and eighty-four, at the United States Court room in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, District Judge, presiding and holding said

court, the following proceedings were had, to wit, on December 23, 1884:

The United States ex rel. Austin Corbin, J. K. O. Sherwood, E. H. Shirk, C. E. Lewis, F. B. Loomis, and C. R. Bissell, for themselves, and others in like case interested,

v.

Abner Gaines, as Collector, and George T. Wilkinson, Clerk of the County Court of Chicot County, Arkansas.

And now, upon consideration of the relation in the above entitled matter, filed herein this day, it is ordered that a
[14] rule issue against Abner Gaines, as Collector of Chicot County, and George T. Wilkinson, Clerk of the County Court of Chicot County, Arkansas, in conformity with the prayer of said relation, requiring them and each of them to show cause in this court on the sixth day of January, 1885: The said Abner Gaines why he should not as Collector of Chicot County, Arkansas, be commanded and required to collect the special tax of twenty mills on the dollar levied by the County Court of Chicot County, Arkansas, for the year 1884, to pay judgments recovered against said county by the relators in this court, and others in like case interested; and to distrain, list, advertise and sell personal property delinquent for said twenty mill tax, and to make and file with the Clerk of the County Court of said county his report of delinquent taxpayers for failure
[15] to pay said twenty mill tax on their personal property, as required by law, and to file with the Clerk of said County Court the list of lands and real property delinquent for failure to pay said twenty mill tax, and to offer for sale all lands and real property delinquent for said twenty mill tax, and strike off the same, as required by law, all to be done at the time and in the manner required by law; and to take each and every and all and singular the process and proceedings, and to do and perform each and every act and thing imposed upon him by law in respect to the enforcement and collection of taxes, the same in respect to said twenty mill tax as to other and general taxes at the time and in the manner provided by law.

And the said George T. Wilkinson, Clerk of the County Court of Chicot County, Arkansas, why he should
[16] not, as such clerk, be commanded to do and perform, in the proper manner and at the proper time, all and singular and each and every act and thing by law required to be done in respect of taxation for the special

tax of twenty mills levied by the County Court of said county for the year 1884 to pay judgments of relators recovered against said county in this court, the same as to other and general taxes levied for the year 1884.

And particularly in respect to the advertisement and publication and recording of the list of lands delinquent for said twenty mill tax, and in regard to his attendance at the sale of sale of lands delinquent for said tax of 1884, and in regard to recording the proceedings of said sale; and as to the certification of a copy of the list of delinquent lands to the Auditor of State, and in regard

[17] to making settlement with the collector, as prescribed in section 167 of the last revenue law of the State of Arkansas, and the presentation of said settlement to the County Court of said county.

[18] On which the Marshal made the following return:

This writ came to hand on the twenty-third day of December, 1884.

D. B. RUSSELL, Marshal.
By H. N. FAULKENBURY, Deputy Marshal.

I have duly served the within writ on the within named Abner Gaines and George T. Wilkinson, by delivering into their hands, each, a true and correct copy of the same at Lake Village, in the Eastern District of Arkansas, on this twenty-sixth day of December, 1884.

D. B. RUSSELL, Marshal.
By H. N. FAULKENBURY, Deputy Marshal.

Indorsed: Returned and filed December 29, 1884.
RALPH L. GOODRICH, Clerk.
By W. P. FEILD, Deputy Clerk.

And on January 2, 1885, the following responses were filed;

[19] CIRCUIT COURT OF THE UNITED STATES,
EASTERN DISTRICT OF ARKANSAS.

The United States ex rel. Austin Corbin, J. K. O. Sherwood, E. H. Shirk, C. E. Lewis, F. B. Loomis and C. R. Bissell, for themselves and others in like case interested,

v.

Abner Gaines, as Collector, and George T. Wilkinson, Clerk of the County Court of Chicot County, Arkansas.

Response of George T. Wilkinson to Rule.

Comes George T. Wilkinson, County Clerk of Chicot

County Arkansas, and in response to the above and foregoing order and rule hereto attached, says that he knows of no reason or cause why he should be commanded to do and perform, in the proper manner and at the proper time, all and singular and every act and thing by law required to be done in respect of taxation, and set forth in
[20] said order and rule. Because, he says that he is now, and at all times will be ready and willing to do and perform his official duties as required by law.

And now, having fully answered, your respondent prays to be discharged with his costs herein.

GEORGE T. WILKINSON,
County Clerk, Chicot County, Arkansas.

The respondent, George T. Wilkinson, says that the statements set forth in the foregoing answer are true to the best of his knowledge and belief.

GEORGE T. WILKINSON.

Sworn to before me, this the twenty-seventh day of December, 1884.

L. H. SPRINGER,
United States Commissioner.

Indorsed:
Filed January 2, 1885.
RALPH L. GOODRICH, Clerk.
By W. P. FEILD, Deputy Clerk.

[21] CIRCUIT COURT OF THE UNITED STATES,
EASTERN DISTRICT OF ARKANSAS.

The United States, ex rel., Austin Corbin, J. K. O. Sherwood, and others,

v.

Abner Gaines, as Collector, and George T. Wilkinson, Clerk of County Court, Chicot County, Arkansas.

Response by Abner Gaines.

Comes Abner Gaines, Collector of Chicot County, Arkansas, by his attorney, and in response to the rule entered against him herein, on the twenty-third day of December, 1884, commanding him to show cause, on the sixth day of January, 1885, "why he should not, as Collector as aforesaid, be commanded and required to collect the special tax of twenty mills on the dollar, levied by the County Court of Chicot County, Arkansas, for the year 1884, to

pay judgments recovered against said county, by the
[22] relators in this court, and others in like case interested, and to distrain, list, advertise and sell personal property delinquent for said twenty mill tax; and to make and file with the Clerk of the County Court of said county his report of delinquent taxpayers for failure to pay said twenty mill tax on their personal property, as required by law; and to file with the Clerk of said County Court the list of lands and real property delinquent for failure to pay said twenty mill tax; and to offer for sale all lands and real property delinquent for said twenty mill tax, and strike off the same, as required by law. All to be done at the time and in the manner required by law, and to take each and every, and all and singular the process and proceedings, and to do and perform each and every act and thing imposed upon him by law in respect to the enforcement and collection of taxes, the same in respect to said
[23] twenty mill tax as to other and general taxes, at the time and in the manner provided by law," begs leave to state:

That he has, from the hour of his qualification and entry upon the discharge of the duties of his office, until now, in each and every particular, as required by law, with reference to the collection of said twenty mill tax, done and performed each and every duty required of him by the laws of the State of Arkansas, the same as to other and general taxes.

That he has at no time, and in no particular, failed to demand said twenty mill tax, and to receive the same from any and all who chose to pay it.

That he is doing and performing daily, in this regard, all the duties imposed upon him by law, as he understands and interprets them, and he intends fully and completely always to do.

[24] Wherefore, having fully responded to said rule, and not being in default in the discharge of any known duty as collector, he prays to be hence dismissed and discharged, with his reasonable costs.

Respondent further states that since the preparation of the foregoing response, and before he could forward same to this honorable court, to wit, on this thirtieth day of December, A. D. 1884, he has had served on him as collector as aforesaid, a writ of injunction, issued by George T. Wilkinson, Clerk of the Circuit Court in and for the County of Chicot, aforesaid, at the suit of Levi H. Springer, forbidding, enjoining and restraining him from doing

and performing any of the things mentioned in the rule herein.

Respondent now exhibits to the court, as a part of his response, a copy of the complaint filed by said
[25] L. H. Springer, in the Chicot Circuit Court, together with a copy of the order of Hon. John M. Bradley, Judge of the Tenth Judicial District of the State of Arkansas indorsed thereon, and also a copy of the writ issued thereon, and so served on respondent this day, as aforesaid.

And respondent further states that the twenty mills tax levied by order of the County Court of Chicot County, is in excess of the amount authorized to be levied annually under the said act under which said bonds were issued, and in excess of the limit of five mills fixed by the Constitution of the State of Arkansas, for paying debts existing at the ratification of the Constitution; and the said levy was made on a day not authorized by laws of Arkansas, all of which will more fully appear by reference to a copy of the said order of said county court, making said
[26] levy, hereto attached and made part hereof, marked "Exhibit E."

Wherefore, having fully answered, he prays to be discharged with his reasonable costs.

JOHN G. B. SIMMS,
Attorney for Abner Gaines, Collector, etc.
D. H. REYNOLDS,
Also Counsel for Gaines.

(Exhibit to response of Gaines.)

IN THE CHICOT CIRCUIT COURT,
JANUARY TERM, 1885.

Levi H. Springer, plaintiff,
against
Abner Gaines, as Collector of Chicot County, defendant.
Complaint in Equity.

The plaintiff, L. H. Springer, states that he is the owner of east half section 30, township 18 south, range 2 west, in said county of Chicot, assessed for taxation for 1884, at $320; and of personal property assessed for taxation for 1884, at $360; as was also the real and personal property of other taxpayers of said county, assessed for taxation for 1884. That said property of plaintiff and of other tax-

payers in said county, was not assessed for taxation for
[27] 1884, as required by law, as plaintiff is informed and
believes; that said real estate was assessed in 1883, for 1883 and 1884, and in making said assessment, said assessor failed to give notice that he would attend, to meet the taxpayers at the voting places in the several townships; that said assessor failed to attend at the voting places to meet the taxpayers; that said assessor appointed an assistant, but did not assign to him a division or part of the county to assess the property therein; that in some of the townships the assistant alone, and in other townships the assistant and the assessor, at such places as to them was convenient, and without regard to the places fixed by law,
[28] met such of the taxpayers as had notice, and chose to attend and give a list of their lands; that the lists and value of the real estate was, in most instances, fixed by the assistant, and in other instances by the assessor, and lists and values so fixed, were placed on the assessor's books, as furnished by the Clerk, and returned into the office of the Clerk of the County Court, without the oath of the assistant as to the correctness of the valuations and assessments made by him alone, or where he made part of the assessment and the assessor made the other part; but the assessor in disregard of the law and of the facts, returned said list with his oath alone attached thereto; and plaintiff is advised that assessment of real estate for taxation for the years 1883 and 1884 was not made as required by law, and that, being illegal, no valid levy of taxes could be made on said assessment.

[29] And plaintiff further states that on June 19, 1883, two of the three persons appointed by the Governor to constitute a board of equalization, met at the county seat, and after taking the oath of office, attempted to organize themselves into a board of equalization by electing one of the two as president, and with the board so organized, the Clerk laid before it the said assessment list of real estate, and said board endeavored to equalize the same upon the idea that the buildings and improvements added to the value of the entire body of cleared lands of the plantation or farm on which they were situate, instead of adding to the value of the particular tract or lot upon which such buildings and improvements were situate, as required by law, and changes were made in said assessment lists accordingly; and plaintiff is advised that said board was not legally
[30] constituted, while it consisted of two members only, and was not, as thus organized, authorized to act

upon said assessment list, and that such acts vitiated the assessment as returned by the assessor, and the action of the board if legally organized, in adopting such rule to equalize, and in changing the list accordingly, acted in violation of law, and rendered such assessment void, if otherwise legal; and that said assessment of real estate for taxation for 1883 and 1884, was not legally equalized as required by law, and that there is no valid assessment of the real estate of Chicot County for taxation for 1884, and that no valid levy of taxes could be made thereon.

And plaintiff further states that the assessment of the personal property for taxation for 1884, was not made as required by law; that the assessor failed to give the notices and to attend at places fixed by law, to meet the tax-
[31] payers to receive lists of their property, and to value the same, and that the assessment list was not properly verified by the affidavits of the assessor and his assistants, and that by reason of the irregular and imperfect assessment so made, many of the largest owners and holders of personal property were left out of the assessment list entirely, and so increasing the burdens to be borne by those placed in the said assessment list, and the board of equalization wholly failed to meet to act on the lists as returned by the assessor; and plaintiff is advised that there is no valid assessment of the personal property of Chicot County for 1884, and there can be no valid levy of taxes made on said invalid assessment.

And plaintiff further states that various persons having judgments in the Circuit Court of the United States for the
[32] Eastern District of Arkansas, against the county of Chicot on coupons of bonds issued to the L. R. P. B. & N. O. R. R. Co., and to the M. O. & R. R. R. R. Co., amounting in the aggregate to over one hundred and twenty thousand dollars, without waiting for a refusal on the part the County Court to levy a tax to pay said judgments, obtained various writs of mandamus from said Court (U. S.), commanding said County Court to levy a tax sufficient to pay the aggregate amount of said judgments; and after the costs had accrued by the issuance, etc., of said writs of mandamus, in disregard of said writs and of the interest of the taxpayers of the county, who had not sought to have the amount of said judgments divided into installments for payments, an attorney of some of said judgment creditors, with or without the consent of the
[33] others of said attorneys and creditors, by letter, addressed to the County Judge of the county, de-

manded a levy of twenty mills on the dollar in place of the levy required by said writs of mandamus; and afterwards on the third Monday in July, 1884, the County Judge, and some of the Justices of the Peace, assuming to be a County Court for the purpose of levying taxes, acting under or in deference to said demand, levied a tax of twenty mills on the assessment lists of 1884. And that said judgments are upon coupons of bonds issued fraudulently, and for which the county and its people never received one dollar of bonefit; the receiving and the issue of bonds being in effect the taking of something for nothing, or in other words, a clear steal of $200,000 from the taxpayers of the county, if payment thereof may be enforced from them under the forms of law; and so having no
[34] moral obligation on part of the taxpayers to ever pay one dollar, if same can be avoided by law.

And the plaintiff further states that the County Court created under section 30, article 7, of the Constitution of Arkansas, for levying taxes and making appropriations for the expenses of the county, is, by section 9 of "An act to revise and amend the revenue laws of Arkansas," approved March 31, 1883, required to meet for that purpose on the first Monday in July in each year, at which time the taxpayers of the county may attend and object to the levy of any specific tax for illegality.

That said County Court for the county of Chicot failed to meet on the first Monday in July, 1884, but the County Judge of said county, and some of the Justices' of the Peace thereof, met at the court-house on the third Monday in July, 1884, without authority of law, and assum-
[35] ing to act as a County Court "for the purpose of levying the county taxes and making appropriations for the expenses of the county," did levy, among other taxes, a tax of twenty mills on the dollar to pay on the judgments against said county in pursuance of the demand made by letter as aforesaid, and against the objection of certain taxpayers of the county who were present, and urged a levy in compliance with said writs of mandamus.

And plaintiff is advised that said levy of twenty mills was made without proper authority and at a time not authorized by law, and same has no legal or binding force as a valid lien on the property of said county.

The plaintiff further states that notwithstanding the illegality of said assessment for 1884, and the illegality of the equalization of the real estate, and the failure to
[36] equalize the assessment of the personal property and illegal effort to divide up the payment of the judg-

ments against the county, and fix a levy of twenty mills in place of the levy ordered by the court, and the failure of the County Court to meet to levy taxes at time fixed by law, and the meeting of the County Judge and some of the Justices of the Peace on a day not authorized by law, and the levy by them of twenty mills without authority of law or order of court, the said twenty mills have been extended as a tax on the tax books of the county, and said tax books have been placed in the hands of the defendant Gaines, as collector, with a warrant commanding him to collect said tax, with other taxes extended on said tax books, and unless restrained he will proceed to collect said tax of twenty mills from plaintiff and from the other taxpayers of said county to their great wrong and injury.

[37] And plaintiff further states that the assessment lists of real estate amounts to $983,032, and the assessment list of personal property amounts to $346,385, and making $1,329,417 in the aggregate, and making for the tax upon all the property of the county as assessed the sum of $26,528.34, and the sum of $13.60 on the said property of this plaintiff.

The premises considered, plaintiff, on behalf of himself and other taxpayers of Chicot County, prays a temporary restraining order directed to said defendant as such collector enjoining and restraining him and his deputies from collecting said tax of twenty mills, or any part thereof, from plaintiff, and from any taxpayer, and from any property in said county, until the further order of this court; and that said defendant be summoned to answer this complaint, and that upon the final hearing of this cause, that such

[38] injunction be made perpetual; and for other relief.

D. H. REYNOLDS.

STATE OF ARKANSAS, }
COUNTY OF CHICOT. }

The plaintiff, Levi H. Springer, says that he believes the statements in the foregoing complaint are true.

L. H. SPRINGER.

Sworn to before me, on this twenty-first day of November, 1884.

[SEAL.] GEORGE T. WILKINSON, Clerk.

Having examined the annexed and foregoing complaint of Levi H. Springer, alleging the illegality of a tax of twenty mills levied on his property, and property of other taxpayers of Chicot County, to pay judgments in the

Circuit Court of the United States for the Eastern District of Arkansas, against said County of Chicot, and praying for a temporary restraining order to enjoin and
[39] restrain Abner Gaines, as collector of said county, from collecting said twenty mill tax, or any part thereof, until the further order of the court; and being of the opinion that such temporary restraining order should be granted, and that a bond in the sum of $2,500 will be sufficient to protect the rights of all parties in interest until the case can be examined into by the court in term time.

It is ordered that upon said plaintiff filing in the office of the clerk of the Chicot Circuit Court, a bond to be approved by said clerk, conditioned to pay to defendant, Abner Gaines, as collector of Chicot County, for the benefit of whom it may concern, the damages not exceeding $2,500, which may be sustained by reason of the injunction in this action, if it is finally decided that said injunction ought not to have been granted.

[40] Said clerk shall issue a temporary restraining order, directed to said defendant, enjoining and restraining him from collecting, or attempting to collect, said twenty mill tax, or any part thereof, until the further order of this court.

Given by me as Judge of the Tenth Judicial Circuit of the State of Arkansas, at Warren, Ark., on this the twenty-sixth day of November, 1884.

JOHN M. BRADLEY, Judge.

On which complaint the following indorsement appears:

Filed and writ issued this December 30, 1884.

GEORGE T. WILKINSON, Clerk.

Which writ, issued on the foregoing complaint, is as follows, to wit:

[41] Summons in action by equitable proceedings.

State of Arkansas, to sheriff of Chicot county:

You are commanded to summon Abner Gaines, as collector, to answer, in twenty days after the service of this summons, upon a complaint in equity, filed against him in the Chicot Circuit Court, by Levi H. Springer, and warn him that upon his failure to answer, the complaint will be taken for confessed; and you will make due return of this summons on the first day of the next January term of said court.

Witness my hand and seal of said court, this thirtieth day of December, 1884.

[SEAL.] GEORGE T. WILKINSON, Clerk.

Which order of injunction is as follows:

[42] Levi H. Springer
v.
Abner Gaines, as collector of Chicot County.

Order of Injunction.

The State of Arkansas to Abner Gaines, as collector of Chicot County, Arkansas:

You and each of your deputies are hereby enjoined and restrained from collecting, or attempting to collect, from the plaintiff, and from any taxpayer, and from any property in said county, the twenty mill tax, or any part thereof, levied on the third Monday in July, 1884, to pay certain judgments obtained in the Circuit Court of the United States for the Eastern District of Arkansas, until the further order of this court.

Witness my hand and seal of said court, hereto attached, this thirtieth day of December, A. D. 1884.

[Seal.] George T. Wilkinson, Clerk.

Indorsed: Filed January 2, 1885.
Ralph L. Goodrich, Clerk.
By W. P. Feild, D. C.

[43] Exhibit "E" to response of Gaines.

Whereas, It has happened that the time fixed by law for holding the County Court, and the Circuit Court, falls on the same day, to wit, on the first Monday in July, 1884;

Therefore be it remembered that on this, the twenty-first day of July, 1884, being the time fixed by law for the holding of the County Court, in the event of the happening of the meeting of the said two courts on the same day.

Court met in the court room in pursuance of law in this case made and provided. Present: The honorable H. C. Newsome, presiding Judge; W. W. White, sheriff, and George T. Wilkinson, clerk.

The Circuit Court still being in session, ordered that this court adjourn to the sheriff's office, in the lower story, in the southeast corner of the court-house building,

[44] which was accordingly done.

The opening of the same having been proclaimed in due form, when the following proceedings were had, to wit:

Ordered that the clerk call over the roll of justices, which was done, and the following named answered to their names, to wit, John Moher, L. Johnston, H. H. Johnson,

L. H. Springer, John F. Scott, S. F. Horner and J. M. Johnson, making seven (7) in all present. The following named were absent, to wit, Levi Hendread, G. Amborn, H. P. Walsh and C. H. Kincaid, a majority of the justices of the county (the same constituting a quorum) being present, the court proceeded to the making of appropriations and levy of taxes, as the law contemplates.

In the matter of railroad bonds, levy of judgment tax.

Under and by virtue of the authority of this court,
[45] conferred by the act of the General Assembly of the State of Arkansas, approved July 23, 1868, entitled, "An act to be entitled an act to authorize counties to subscribe stock in railroads," and the payment of judgments against this county, rendered by the Circuit Court of the United States upon coupons, for interest, attached to bonds issued by this county under said act, there is hereby levied a tax of twenty mills upon the dollar, of all the taxable property of this county, payable only in United States currency, and to be collected in the same manner and at the same time that other county taxes, this day levied, are collected; and the proceeds of said tax are hereby ordered to be paid into the registry of said the Circuit Court of the United States, when collected, to be applied *pro rata*
[46] to the payment of the judgments of said court against this county, mentioned in sundry writs of mandamus heretofore, from said court, issued and to this court directed.

STATE OF ARKANSAS, }
COUNTY OF CHICOT. }

I, George T. Wilkinson, clerk of the Circuit Court and ex officio clerk of the County Court, within and for the county and State aforesaid, do hereby certify that the preceding two pages, and the above writing on this page contain true and correct copies of the orders made and entered in the matters therein mentioned, as the same appears of record in Record Book "H" of the proceedings of said County Court, on pages 90 and 94, in my office.

Witness my hand and the seal of said County Court, hereto affixed, this the third day of January, 1885.

[SEAL.] GEORGE T. WILKINSON, Clerk.

[47] And on January 6, 1885, the following order was entered, to wit:

United States ex rel. Austin Corbin, J. K. O. Sherwood, Charles E. Lewis, E. H. Shirk, F. B. Loomis and Charles R. Bissell,

v.

Abner Gaines, as collector, and George T. Wilkinson, as Clerk of Chicot County Arkansas.

And now this matter came on to be heard, upon the relation of the relators, for a peremptory mandamus to Abner Gaines, as collector, and George T. Wilkinson, as clerk of the County of Chicot, State of Arkansas, and the several responses of the said Gaines and Wilkinson, as collector and clerk, to the rule issued in pursuance of said relation, said relators appearing by B. C. Brown, E. W. Kimball and Charles P. Redmond, and said respondents by D. H. Reynolds and J. G. B. Sims, and the court

[48] having heard the same, and being well advised in the premises, doth consider and adjudge that said several responses be held for naught.

And it is now here by the court ordered, considered and adjudged, that said Abner Gaines, as collector of Chicot County, Arkansas, do proceed, forthwith, to collect, in United States currency only, the taxes levied by the County Court of Chicot County, for the year of 1884, to wit, two *per centum* of the assessed value of the taxable property of said county, in pursuance of the various writs of mandamus issued by this court to said county court, for the payment of the various judgments theretofore rendered by this court upon the coupons of the bonds of said county, issued in aid of railroads, under the act of July 23, 1868.

And that this he do the same as if no injunction

[49] had been made, or issued to him by the Circuit Court of Chicot County, restraining or enjoining the collection of said tax; and that the money so collected, without diminution or costs, except legal commissions, be forthwith paid into the registry of this court.

The said collector will collect the said tax as other taxes are collected, but without penalty upon all such taxes which may be paid before the day when by law he is required to advertise real estate for sale for such delinquent tax.

And that said clerk proceed to do and perform in the proper manner, and at the proper time, all and singular, and each and every act and thing by law required to be

done in respect of taxation, for the special tax of twenty mills levied by the County Court of said county, for the year of 1884, to pay judgments of the relators recovered against said county in this court, the same as to
[50] other and general taxes levied for the year 1884; and this he do the same as if no injunction had been made or served upon him, by and from the Circuit Court of Chicot County, Arkansas.

It is further ordered that a duly certified copy of this order shall forthwith be served by the marshal on said collector and clerk.

To which ruling and order of the court respondent excepts; and time is given him to prepare and file his bill of exceptions.

And, on January 16, 1885, the following proceedings were had, to wit:

[51] United States ex rel. Austin Corbin, J. K. O. Sherwood, Charles E. Lewis, E. H. Shirk, F. B. Loomis and Charles R. Bissell,

v.

Abner Gaines, as Collector, and George T. Wilkinson, as Clerk of Chicot County, Arkansas.

Come Abner Gaines, as collector, and George T. Wilkinson, as clerk of Chicot County, Arkansas, by D. H. Reynolds, Esq., their attorney, and filed their supersedeas bond, which is approved by the court, and also their writ of error and citation which are allowed, signed and sealed by the court.

And, on January 19, 1885, the following proceedings were had, to wit:

[52] United States ex rel. Austin Corbin, J. K. O. Sherwood, Charles E. Lewis, E. H. Shirk, F. B. Loomis and Charles R. Bissell,

v.

Abner Gaines, as Collector of Chicot County, Arkansas, and George T. Williamson, Clerk of the County Court of said county.

Be it remembered, that at the hearing of this case on January 6, 1885, upon the petition of relators and response of the collectors and the response of the clerk, it was agreed and admitted that peremptory writs of mandamus were duly issued from this court commanding the County Court of Chicot County to levy a tax to pay judgments

which were duly rendered in this court in favor of the relators and others, upon coupons cut from bonds issued by said county, under the provisions of an act of the General Assembly of the State of Arkansas, approved July
[53] 23, 1868, and entitled "an act to authorize counties to subscribe stock in railroads," which judgments amount in the aggregate to about $140,000.

The following is a copy of one of said writs:

[54] UNITED STATES OF AMERICA,

EASTERN DISTRICT OF ARKANSAS:

In the Circuit Court of the United States for said Eastern District.

United States ex rel. Charles E. Lewis,

v.

Chicot County.

The President of the United States to the County of Chicot and the County Judge..... ..... and Justices' of the Peace of said county, constituting the County Court of said county, for the purpose of levying taxes:

WHEREAS, It appears of record in our said court that the said relator herein, upon the twenty-fourth day of April, 1878, recovered judgment in our said court against said county for the sum of $6,638.78 debt and damage, and $106.66 cost of suit, with six per cent. interest per annum thereon, upon certain coupons issued by said county, under provisions of an act approved July 23, 1868, entitled an act to be entitled an act to authorize counties to subscribe stock in railroads, which judgment is in full force, less credits;

And, whereas, by the provisions of said act power is given to, and it is made the duty of said County Court to levy a special tax annually sufficient to pay said coupons as they mature (which power and duty is in no manner restricted or impaired by the Constitution of the State of 1874). And, whereas, said county has neglected and refused to pay said judgment, and upon due notice, has failed to show any sufficient cause against the issue of a peremptory writ of mandamus to compel the performance of said duty;

Now, therefore, We command you and each of you so composing said County Court for the levy of taxes, to meet and convene on the first day fixed by law in July,

1884, for levying taxes for county purposes at the place appointed by law, and then and there levy a special tax on all taxable property of said county, Chicot, payable in United States currency only, to pay the said judgment, interest and costs, and costs of this proceeding, and that you cause the same to be collected at the same time and in the same manner other taxes are collected, and when collected, that you cause the same to be paid into the registry of our said court at Little Rock, without delay; and this levy, collection and payment you will make and cause to be made in addition to all other taxes you are by law authorized and required to levy at the same time. And hereof fail not, and make due return, in writing, to our said Circuit Court, on the first day of its next term, how you have executed this writ.

In testimony whereof, Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United [SEAL] States, has caused the seal of said Circuit Court to be hereunto affixed, this tenth day of May, A. D. 1884, and in the one hundred and eighth year of our independence.

Attest: RALPH L. GOODRICH, Clerk.
By W. P. FEILD, D. C.

[NOTE.—The service of this writ on the County Judge, alone, binds the county and the County Court to the performance of the commands of the writ. It is the duty of the County Judge to lay the writ before the County Court when convened to levy county taxes.]

[55] The following indorsements appear on said writ:

"Twenty mills must be levied for 1884."

"In obedience to the within writ, I have summoned the within named Chicot County, by delivering into the hands of H. C. Nusome, County Judge of said Chicot County, a true and correct copy of the same at his residence, in Columbia, Chicot County, in the Eastern District of Arkansas, on this third day of July, A. D., 1884."

"D. B. RUSSELL, Marshal,
"By H. A. ORLOPP, D. M.

"Marshal's fees:

"Service	$ 2 00
"140 miles	8 40
	$10 40

"Returned and filed July 15, 1884.

"RALPH L. GOODRICH, Clerk,
"By W. P. FEILD, D. C."

[56] All others, fifty-one in number, were of like tenor and effect, except as to names of relator and amount of judgment.

That at and after said writs issued and were served by permission of this court, said creditors, by indorsements on said writs and otherwise, informed said County Court that the levy of twenty mills on the dollar of the taxable property of said county, amounting to $1,329,417, which tax would produce about $26,528.34 less delinquencies and expenses of collection, would be a satisfactory compliance with the demands of said writs, or satisfactory levy of tax for 1884; and that said collection should be distributed *pro rata* among said judgment creditors, towards satisfying said judgments; that no one of said creditors would receive exceeding $1,800, of said collection, and no taxpayer of said county would pay on said levy over $3,000;

[57] that said tax of twenty mills was duly levied as shown by the order of the said County Court levying the same, a copy of said order being an exhibit to the response of the collector, and said tax was extended on the tax books of the county by its clerk, and that said tax books, were, in November, 1884, placed in the hands of the respondent, Gaines, as collector; that respondent was engaged in collecting said taxes when the rule in this proceeding was served on him, on December 26, 1884, and continued to so collect, and had collected a small part thereof, when on December 30, 1884, he was by the Judge of the Circuit Court of Chicot County, by order made on November 26, 1884, enjoined and restrained from collecting said twenty mills tax, until the further order of that court; and that said collector has not been restrained by the State Court from collecting any

[58] other taxes levied at the same time with the said tax of twenty mills; that, in obedience to said injunction, respondent has refrained from collecting said tax of twenty mills, and that said injunction suit is still pending and undetermined; that said writs of mandamus directing the levy of said tax did not, in terms, include the clerk or the collector of said county, nor were said writs served on either of them.

These are all the facts in the case not embraced in said petition and response.

And thereupon, after argument of counsel, the court made the following ruling and decision:

1. That this court acquired jurisdiction of the subject matter of the assessment, and of the levy and the collec-

tion of taxes in Chicot County for 1884, so far as the same related to the tax directed to be levied by its writs of mandamus, and that the levy of a less tax than order-
[59] ed in the writs, when made at the request of the relators by permission of the court, did not waive or abridge such jurisdiction, and that the State court had no jurisdiction to inquire into the assessment, the levy or the collection of the tax, so far as the same related to or effected the twenty mills tax, or to restrain the collection of such tax.

2. That the alleged defects in said assessment and levy, as set out in the response of the collector and the exhibits thereto, are not sufficient to invalidate the assessment and levy, or to warrant a court in restraining the collection of a tax so levied thereon.

3. That the injunction by the State court is no defense to this application for a mandamus to enforce the collection of said tax of twenty mills.

4. That the County Court of Chicot County, that levied said twenty mill tax, was held and the tax levied at
[60] the time prescribed by law.

5. That the writs of mandamus, as prayed for against said collector and against said clerk, should be granted, and it will be accordingly so done.

To which rulings and decision of the court the respondents at the time excepted, and by leave of court, have reduced the admitted facts, not fully stated in the petition and response, and the said rulings and decisions to writing, and here present the same to be signed and sealed and made a part of the record in this case, which is accordingly, on this seventh day of January, A. D. 1885.

HENRY C. CALDWELL, Judge.

And be it further remembered that on said seventh day of January, 1885, after the decision and judgment of the court were rendered and bill of exceptions noted, said respondent prayed for a writ of error to the Supreme
[61] Court of the United States, and that the same operate as a supersedeas upon respondents' filing a bond conditioned according to law, and that the court fix the amount of the said bond, and thereupon the court fixed the amount of said bond at the sum of ($3,000) three thousand dollars, and ordered that upon the filing and approval of such bond, the same to operate as a supersedeas, that the writ of error be granted, and respondents excepted to so much of said ruling as fixed the amount of said bond at three thousand dollars as being excessive.

And it is ordered by the court that this entry bear date as of January 16, 1885.

HENRY C. CALDWELL, Judge.

Which supersedeas bond is in the words and figures following, to wit:

[62] IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE EASTERN DISTRICT OF ARKANSAS.

United States ex rel. Austin Corbin *et al*,

v.

Abner Gaines, as Collector of Chicot County, Arkansas, and George T. Wilkinson, clerk of said county.

Supersedeas Bond.

Know all men by these presents, that we, Daniel H. Reynolds, Robert E. Craig, Richard M. Gaines and George Read, are held and firmly bound unto Austin Corbin and others, the relators in the above entitled cause (being judgment creditors of Chicot County, Arkansas, at whose instance peremptory writs of mandamus were issued by said court commanding the County Court of said county to levy a tax, in 1884, to pay on their judgments) in the full and just sum of three thousand dollars, to be

[63] paid to said Austin Corbin and others, the said relators, their certain attorneys, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this —— day of January, 1885.

Whereas, lately at a term of the Circuit Court of the United States for the Eastern District of Arkansas, begun and held in the city of Little Rock on the fourth Monday in October, 1884, on a day in said term, in a suit depending in said court between United States ex rel. Austin Corbin and others, and Abner Gaines, as Collector of Chicot County, Arkansas, and George T. Wilkinson, as Clerk of the County Court of said county of Chicot, a judgment was rendered against said Abner Gaines and against said George T. Wilkinson, and the said

[64] Abner Gaines and George T. Wilkinson having obtained a writ of error and filed a copy thereof in clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation to the said Austin Corbin and others, said relators, them citing and admonishing to

be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday in October next.

Now, the condition of the above obligation is such that if the said Abner Gaines and the said George T. Wilkinson shall prosecute their writ of error to effect, and answer all damages and costs, if they shall fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

D. H. Reynolds, [Seal.]
R. E. Craig, [Seal.]
R. M. Gaines, [Seal.]
George Read. [Seal.]

Indorsed: Filed January 16, 1885.
Ralph L. Goodrich, Clerk.

[65] Which citation is as follows:

[66] THE UNITED STATES OF AMERICA—Greeting:

To Austin Corbin, J. K. O. Sherwood, E. H. Shirk, C. E. Lewis, F. B. Loomis and Charles R. Bissell:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday in October next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the Eastern District of Arkansas, wherein Abner Gaines, as Collector of Chicot County, Arkansas, and George T. Wilkinson, Clerk of the County Court of said county, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Henry C. Caldwell, judge of the District Court, this sixteenth day of January A. D. 1885.
[Seal].
Henry C. Caldwell, District Judge.

Service acknowledged for Charles R. Bissell, January 16, 1885.

C. P. Redmond, Attorney.
Eben W. Kimball, Attorney.
B. C. Brown, Attorney.

[67] UNITED STATES OF AMERICA,

EASTERN DISTRICT OF ARKANSAS.

I, Ralph L. Goodrich, Clerk of the Circuit Court of the United States for the Eastern District of Arkansas, in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct and compared copies of the originals remaining of record in my office.

In witness whereof, I have hereunto set my hand and the seal of said court, this, the twenty-fourth day of January, in the year of our Lord one [SEAL.] thousand eight hundred and eighty-five, and of the Independence of the United States of America, the one hundred and ninth.

Attest: RALPH L. GOODRICH, Clerk.

122—639

Supreme Court of the United States of America

Oct. Term 1884

No. 821 496

ABNER GAINES, as Collector, and GEORGE T. WILKINSON, as Clerk of Chicot County, Arkansas,

Plaintiffs in Error,

No

vs.

AUSTIN CORBIN, J. K. O. SHERWOOD, E. H. SHIRK, C. E. LEWIS, F. B. LOOMIS and CHAS. R. BISSELL,

Defendants in Error.

In Error to the Circuit Court of the United States for the Eastern District of Arkansas.

RECORD.

Filed Feby 11th 1885.

LITTLE ROCK:
UNION PRINTING COMPANY, LAW PRINTERS.
1885.

In the Supreme Court of the United States
OF AMERICA.

ABNER GAINES, as Collector, and GEORGE T. WILKINSON, as Clerk of Chicot County, Arkansas,

No. —. v.

AUSTIN CORBIN, J. K. O. SHERWOOD, E. H. SHIRK, C. D. LEWIS, F. B. LOQMIS, and CHARLES R. BISSELL, *Defendants in Error.*

In Error to the Circuit Court of the United States for the Eastern District of Arkansas.

INDEX.

Writ of Error 1
Caption 2
Relation for rule to show cause 3-12
Return of Marshal on rule 18
Response of G. T. Wilkinson, as Clerk of Chicot County 19-20
Response of A. Gaines, Collector, etc 21-26
Exhibit to Response of Gaines 26-42
Exhibit "E" to Response of Gaines 43-46
Supersedeas Bond 62-64
Citation 66
Clerk's Certificate 66

RECORD ENTRIES.

Order for rule on Collector and Clerk of Chicot County 13-19
Responses of Gaines and Wilkinson held for naught, and Exceptions of Respondents filed 47-50
Supersedeas Bond and Writ of Error filed 51
Respondents' exceptions to ruling of the Court, and amount of Supersedeas Bond fixed at $3,000 52-61

[1] UNITED STATES OF AMERICA—SS.

THE PRESIDENT OF THE UNITED STATES OF AMERICA,
To the Honorable the Judges of the Circuit Court of the United States, for the Eastern District of Arkansas—Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, wherein Austin Corbin, J. K. O. Sherwood, E. H. Shirk, C. E. Lewis, F. B. Loomis and Charles R. Bissell are relators, and Abner Gaines, as Collector of Chicot County, Arkansas, and George T. Wilkinson, Clerk of the County Court of said County, are respondents, and wherein, by the consideration of said Court, the said respondents were required to proceed to collect certain taxes levied on the taxable property within the County of Chicot, in the State of Arkansas, to satisfy the relators' judgments against said county a manifest error hath happened, to the great damage of the said Abner Gaines, as Collector, and George T. Wilkinson, Clerk of said County of Chicot, as by their complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the records and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the laws and custom of the United States ought to be done.

Witness, the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this sixteenth day of January, in the year of our [SEAL.] Lord, one thousand eight hundred and eighty-five, and of the independence of the United States one hundred and ninth.

RALPH L. GOODRICH,
Clerk of the Circuit Court of the United States of America, for the Eastern District of Arkansas.

Allowed by HENRY C. CALDWELL, District Judge.

The execution of the foregoing writ of error appears from the schedule hereto attached.

RALPH L. GOODRICH, CLERK.

[2] Be it remembered that on the twenty-third day of December A. D. 1884, came into the office of the Clerk of the Circuit Court of the United States, Austin Corbin et al., by B. C. Brown, E. W. Kimball and Charles P. Redmond, Esqs., and filed therein a relation for rule to show cause against Abner Gaines, Collector, and George T. Wilkinson, Clerk of the County Court of Chicot County, Arkansas, which relation is in the words and figures following, to wit:

[3] CIRCUIT COURT OF THE UNITED STATES,
EASTERN DISTRICT OF ARKANSAS.

The United States ex rel. Austin Corbin, J. K. O. Sherwood, E. H. Shirk, C. E. Lewis, F. B. Loomis and C. R. Bissell, for themselves and others in like case interested,

v.

Abner Gaines, as Collector of Chicot County, Arkansas, and George T. Wilkinson, Clerk of the County Court of said county.

The relators state and show to this court that, by the consideration and judgment of this Honorable Court, they have each recovered, at different times, a number of judgments against Chicot County, Arkansas, amounting in the aggregate to many thousand dollars, which judgments were all based upon coupons taken from bonds issued by said County of Chicot under the provisions of an act of [4] the State of Arkansas, passed and approved July 23, 1868, entitled "An act to authorize counties to subscribe stock in railroads," a list of which judgments, with their dates and amounts, will be hereto attached should it become necessary or be required.

Relators further show that in the month of May, 1884, several writs of mandamus issued out of this Honorable Court, and under the seal thereof, directed to the County Court of Chicot County, Arkansas, commanding said County Court, under the provisions of said act, to levy a sufficient tax for the year 1884 to pay each and all of said judgments; that after the issue of said writs of mandamus, by the consent of relators and by and with the consent and approval of this Honorable Court, it was agreed that if the County Court of Chicot County, aforesaid, would levy [5] a tax for the year 1884 of twenty mills upon the property of said county, and collect the same, said tax to be distributed *pro rata* among the judgments so recovered by your relators and others against said County

[1] UNITED STATES OF AMERICA—SS.

THE PRESIDENT OF THE UNITED STATES OF AMERICA,
To the Honorable the Judges of the Circuit Court of the United States, for the Eastern District of Arkansas—Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, wherein Austin Corbin, J. K. O. Sherwood, E. H. Shirk, C. E. Lewis, F. B. Loomis and Charles R. Bissell are relators, and Abner Gaines, as Collector of Chicot County, Arkansas, and George T. Wilkinson, Clerk of the County Court of said County, are respondents, and wherein, by the consideration of said Court, the said respondents were required to proceed to collect certain taxes levied on the taxable property within the County of Chicot, in the State of Arkansas, to satisfy the relators' judgments against said county a manifest error hath happened, to the great damage of the said Abner Gaines, as Collector, and George T. Wilkinson, Clerk of said County of Chicot, as by their complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the records and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the laws and custom of the United States ought to be done.

Witness, the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this sixteenth day of January, in the year of our
[SEAL.] Lord, one thousand eight hundred and eighty-five, and of the independence of the United States one hundred and ninth.

RALPH L. GOODRICH,
Clerk of the Circuit Court of the United States of America, for the Eastern District of Arkansas.

Allowed by HENRY C. CALDWELL, District Judge.

The execution of the foregoing writ of error appears from the schedule hereto attached.

RALPH L. GOODRICH, CLERK.

[2] Be it remembered that on the twenty-third day of December A. D. 1884, came into the office of the Clerk of the Circuit Court of the United States, Austin Corbin et al., by B. C. Brown, E. W. Kimball and Charles P. Redmond, Esqs., and filed therein a relation for rule to show cause against Abner Gaines, Collector, and George T. Wilkinson, Clerk of the County Court of Chicot County, Arkansas, which relation is in the words and figures following, to wit:

[3] CIRCUIT COURT OF THE UNITED STATES,
EASTERN DISTRICT OF ARKANSAS.

The United States ex rel. Austin Corbin, J. K. O. Sherwood, E. H. Shirk, C. E. Lewis, F. B. Loomis and C. R. Bissell, for themselves and others in like case interested,

v.

Abner Gaines, as Collector of Chicot County, Arkansas, and George T. Wilkinson, Clerk of the County Court of said county.

The relators state and show to this court that, by the consideration and judgment of this Honorable Court, they have each recovered, at different times, a number of judgments against Chicot County, Arkansas, amounting in the aggregate to many thousand dollars, which judgments were all based upon coupons taken from bonds issued by said County of Chicot under the provisions of an act of
[4] the State of Arkansas, passed and approved July 23, 1868, entitled "An act to authorize counties to subscribe stock in railroads," a list of which judgments, with their dates and amounts, will be hereto attached should it become necessary or be required.

Relators further show that in the month of May, 1884, several writs of mandamus issued out of this Honorable Court, and under the seal thereof, directed to the County Court of Chicot County, Arkansas, commanding said County Court, under the provisions of said act, to levy a sufficient tax for the year 1884 to pay each and all of said judgments; that after the issue of said writs of mandamus, by the consent of relators and by and with the consent and approval of this Honorable Court, it was agreed that if the County Court of Chicot County, aforesaid, would levy
[5] a tax for the year 1884 of twenty mills upon the property of said county, and collect the same, said tax to be distributed *pro rata* among the judgments so recovered by your relators and others against said County

of Chicot in this Honorable Court, that such levy, collection and distribution would be accepted by the relators and other judgment creditors as sufficient compliance, by said County Court, with the commands of the said writs of mandamus, —— copies of which writs of mandamus are hereto attached.

Relators further show that they are informed and believe that the County Court of Chicot County obeyed the said writs of mandamus in accordance with the agreement before mentioned, and did levy a special tax of twenty mills upon the dollar upon all the taxable property
[6] of said county, under the provisions of the act aforesaid, to be applied to the payment, *pro rata*, of the said judgments.

They further show that they are informed, and believe, that said special tax was by the clerk of said County Court duly and properly extended upon the tax books; that said tax books, with said tax extended thereon, was in due form of law and apt time delivered to Abner Gaines, the collector of taxes of said County of Chicot, and it thereupon became his duty, under the laws, to give obedience to the said writs of mandamus, to collect said tax at the time when all other taxes are collected, and to pay the same into this Honorable Court for distribution upon said judgments.

Relators further state that they are informed, and believe, that the said Abner Gaines, as Collector of said county of Chicot, has refused and neglected to collect
[7] said twenty mills tax; that he collects and receives other taxes levied by the County Court at the same time and by the same tax levy from the tax-payers of Chicot County, and wholly fails to collect the amount of tax so, as aforesaid, levied by the said County Court for the payment of relators' judgments and the other judgments rendered by this court against said county of Chicot.

Relators further show that they fear from past experience and the dilatory proceedings that have heretofore been had in this Honorable Court to avoid the collection of taxes levied under the orders and process of this court by the officers and tax-payers of said county, that the clerk of said County Court will fail and neglect to perform some of his duties in relation to the collection of said taxes and the sales of property delinquent for said twenty mill tax.
[8] And they fear said collector will neglect to distrain for personal property and sell real estate delinquent for said twenty mill tax.

But are willing that said Abner Gaines, collector of said county, and George T. Wilkinson, Clerk of the said County Court, may be heard, to show cause, if any they have, why they and each of them should not be commanded to do each, all, every and singular, their duties under the laws in relation to the collection of said twenty mill tax, the advertisement, publishing sale, and distraint of real and personal property delinquent for failure to pay said tax, and the recording, reporting and certifying all matters and things required to be done by law in relation to said tax.

Relators therefore pray that a rule be made and served upon said Abner Gaines, Collector as aforesaid, and George T. Wilkinson, Clerk of said County Court of Chicot
[9] County, requiring them and each of them, at an early day to be therein named, to appear before this Honorable Court and respectively show cause, if any they have, why they and each of them should not be commanded to do and perform each, all and every thing and duty required of them by law in regard to the collection of said twenty mill tax, the advertisement, distraint and sale of personal and real property for delinquency thereon, the recording, listing, reporting and certifying, and each, all and every matter and thing required of them by law to be done in relation to said twenty mill tax.

And that said George T. Wilkinson, Clerk of the County Court of Chicot County, Arkansas, be required to show cause why he should not be commanded that he do and perform, in the proper manner and at the proper
[10] time, all and singular and each and every act and thing by law required to be done in respect of taxation for said twenty mill tax, the same as to other and general taxes levied for the year 1884. And particularly in respect to the advertisement and publication and recording of the list of lands delinquent for said twenty mill tax; and in regard to his attendance at the sale of lands delinquent for said taxes of 1884, and in regard to recording the proceedings of said sale; and as to the certification of a copy of the list of delinquent lands to the Auditor of State; and in regard to the making settlement with the collector as prescribed in section 167 of the last revenue law of the State of Arkansas, and the presentation of said settlement to the County Court of said county.

And that said Abner Gaines, collector as afore-
[11] said, show cause why he should not be commanded to collect the said special tax of twenty mills, levied

as aforesaid for the year 1884, and to distrain, list, advertise and sell personal property delinquent for said twenty mill tax, and to make and file with the Clerk of the County Court his report of delinquent taxpayers for failure to pay said twenty mill tax on their personal property as required by law; and to file with the Clerk of said County Court the list of real property delinquent for failure to pay said twenty mill tax, and to offer for sale all lands and real property delinquent for said twenty mill tax, and strike off the same as required by law, all to be done at the time and in the manner required by law; and to take, each and every and all and singular, the pro-

[12] cess and proceedings, and to do and perform each and every act and thing imposed upon him by law in respect to the enforcement and collection of taxes, the same in respect to said twenty mill tax as to other and general taxes at the time and in the manner provided by law.

And your petitioners and relators pray for such other and further relief in the premises as it is proper for the court to grant, and their case may demand.

C. P. Redmond,
B. C. Brown,
E. W. Kimball,
Counsel for Relators.

C. P. Redmond, being duly sworn, says that he believes the statements of the foregoing relation are true.

C. P. Redmond.

Subscribed and sworn to before me this twenty-third day of December, 1884.

Ralph L. Goodrich, Clerk,
By W. P. Field, D. C.

Indorsed: Filed December 23, 1884.
Ralph L. Goodrich, Clerk.

[13] UNITED STATES OF AMERICA,
Eastern District of Arkansas.

Be it remembered that at a Circuit Court of the United States of America, in and for the Eastern District of Arkansas, begun and holden on Monday, the twenty-seventh day of October, Anno Domini one thousand eight hundred and eighty-four, at the United States Court room in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, District Judge, presiding and holding said

court, the following proceedings were had, to wit, on December 23, 1884:

The United States ex rel. Austin Corbin, J. K. O. Sherwood, E. H. Shirk, C. E. Lewis, F. B. Loomis, and C. R. Bissell, for themselves, and others in like case interested,

v.

Abner Gaines, as Collector, and George T. Wilkinson, Clerk of the County Court of Chicot County, Arkansas.

And now, upon consideration of the relation in the above entitled matter, filed herein this day, it is ordered that a
[14] rule issue against Abner Gaines, as Collector of Chicot County, and George T. Wilkinson, Clerk of the County Court of Chicot County, Arkansas, in conformity with the prayer of said relation, requiring them and each of them to show cause in this court on the sixth day of January, 1885: The said Abner Gaines why he should not as Collector of Chicot County, Arkansas, be commanded and required to collect the special tax of twenty mills on the dollar levied by the County Court of Chicot County, Arkansas, for the year 1884, to pay judgments recovered against said county by the relators in this court, and others in like case interested; and to distrain, list, advertise and sell personal property delinquent for said twenty mill tax, and to make and file with the Clerk of the County Court of said county his report of delinquent taxpayers for failure
[15] to pay said twenty mill tax on their personal property, as required by law, and to file with the Clerk of said County Court the list of lands and real property delinquent for failure to pay said twenty mill tax, and to offer for sale all lands and real property delinquent for said twenty mill tax, and strike off the same, as required by law, all to be done at the time and in the manner required by law; and to take each and every and all and singular the process and proceedings, and to do and perform each and every act and thing imposed upon him by law in respect to the enforcement and collection of taxes, the same in respect to said twenty mill tax as to other and general taxes at the time and in the manner provided by law.

And the said George T. Wilkinson, Clerk of the County Court of Chicot County, Arkansas, why he should
[16] not, as such clerk, be commanded to do and perform, in the proper manner and at the proper time, all and singular and each and every act and thing by law required to be done in respect of taxation for the special

tax of twenty mills levied by the County Court of said county for the year 1884 to pay judgments of relators recovered against said county in this court, the same as to other and general taxes levied for the year 1884.

And particularly in respect to the advertisement and publication and recording of the list of lands delinquent for said twenty mill tax, and in regard to his attendance at the sale of sale of lands delinquent for said tax of 1884, and in regard to recording the proceedings of said sale; and as to the certification of a copy of the list of delinquent lands to the Auditor of State, and in regard

[17] to making settlement with the collector, as prescribed in section 167 of the last revenue law of the State of Arkansas, and the presentation of said settlement to the County Court of said county.

[18] On which the Marshal made the following return:

This writ came to hand on the twenty-third day of December, 1884.

D. B. Russell, Marshal.
By H. N. Faulkenbury, Deputy Marshal.

I have duly served the within writ on the within named Abner Gaines and George T. Wilkinson, by delivering into their hands, each, a true and correct copy of the same at Lake Village, in the Eastern District of Arkansas, on this twenty-sixth day of December, 1884.

D. B. Russell, Marshal.
By H. N. Faulkenbury, Deputy Marshal.

Indorsed: Returned and filed December 29, 1884.
Ralph L. Goodrich, Clerk.
By W. P. Feild, Deputy Clerk.

And on January 2, 1885, the following responses were filed;

[19] CIRCUIT COURT OF THE UNITED STATES,
Eastern District of Arkansas.

The United States ex rel. Austin Corbin, J. K. O. Sherwood, E. H. Shirk, C. E. Lewis, F. B. Loomis and C. R. Bissell, for themselves and others in like case interested,

v.

Abner Gaines, as Collector, and George T. Wilkinson, Clerk of the County Court of Chicot County, Arkansas.

Response of George T. Wilkinson to Rule.

Comes George T. Wilkinson, County Clerk of Chicot

County Arkansas, and in response to the above and foregoing order and rule hereto attached, says that he knows of no reason or cause why he should be commanded to do and perform, in the proper manner and at the proper time, all and singular and every act and thing by law required to be done in respect of taxation, and set forth in
[20] said order and rule. Because, he says that he is now, and at all times will be ready and willing to do and perform his official duties as required by law.

And now, having fully answered, your respondent prays to be discharged with his costs herein.

GEORGE T. WILKINSON,
County Clerk, Chicot County, Arkansas.

The respondent, George T. Wilkinson, says that the statements set forth in the foregoing answer are true to the best of his knowledge and belief.

GEORGE T. WILKINSON.

Sworn to before me, this the twenty-seventh day of December, 1884.

L. H. SPRINGER,
United States Commissioner.

Indorsed:
Filed January 2, 1885.
RALPH L. GOODRICH, Clerk.
By W. P. FEILD, Deputy Clerk.

[21] CIRCUIT COURT OF THE UNITED STATES,
EASTERN DISTRICT OF ARKANSAS.

The United States, ex rel., Austin Corbin, J. K. O. Sherwood, and others,

v.

Abner Gaines, as Collector, and George T. Wilkinson, Clerk of County Court, Chicot County, Arkansas.

Response by Abner Gaines.

Comes Abner Gaines, Collector of Chicot County, Arkansas, by his attorney, and in response to the rule entered against him herein, on the twenty-third day of December, 1884, commanding him to show cause, on the sixth day of January, 1885, "why he should not, as Collector as aforesaid, be commanded and required to collect the special tax of twenty mills on the dollar, levied by the County Court of Chicot County, Arkansas, for the year 1884, to

pay judgments recovered against said county, by the
[22] relators in this court, and others in like case interested, and to distrain, list, advertise and sell personal property delinquent for said twenty mill tax; and to make and file with the Clerk of the County Court of said county his report of delinquent taxpayers for failure to pay said twenty mill tax on their personal property, as required by law; and to file with the Clerk of said County Court the list of lands and real property delinquent for failure to pay said twenty mill tax; and to offer for sale all lands and real property delinquent for said twenty mill tax, and strike off the same, as required by law. All to be done at the time and in the manner required by law, and to take each and every, and all and singular the process and proceedings, and to do and perform each and every act and thing imposed upon him by law in respect to the enforcement and collection of taxes, the same in respect to said
[23] twenty mill tax as to other and general taxes, at the time and in the manner provided by law," begs leave to state:

That he has, from the hour of his qualification and entry upon the discharge of the duties of his office, until now, in each and every particular, as required by law, with reference to the collection of said twenty mill tax, done and performed each and every duty required of him by the laws of the State of Arkansas, the same as to other and general taxes.

That he has at no time, and in no particular, failed to demand said twenty mill tax, and to receive the same from any and all who chose to pay it.

That he is doing and performing daily, in this regard, all the duties imposed upon him by law, as he understands and interprets them, and he intends fully and completely always to do.

[24] Wherefore, having fully responded to said rule, and not being in default in the discharge of any known duty as collector, he prays to be hence dismissed and discharged, with his reasonable costs.

Respondent further states that since the preparation of the foregoing response, and before he could forward same to this honorable court, to wit, on this thirtieth day of December, A. D. 1884, he has had served on him as collector as aforesaid, a writ of injunction, issued by George T. Wilkinson, Clerk of the Circuit Court in and for the County of Chicot, aforesaid, at the suit of Levi H. Springer, forbidding, enjoining and restraining him from doing

and performing any of the things mentioned in the rule herein.

Respondent now exhibits to the court, as a part of his response, a copy of the complaint filed by said
[25] L. H. Springer, in the Chicot Circuit Court, together with a copy of the order of Hon. John M. Bradley, Judge of the Tenth Judicial District of the State of Arkansas indorsed thereon, and also a copy of the writ issued thereon, and so served on respondent this day, as aforesaid.

And respondent further states that the twenty mills tax levied by order of the County Court of Chicot County, is in excess of the amount authorized to be levied annually under the said act under which said bonds were issued, and in excess of the limit of five mills fixed by the Constitution of the State of Arkansas, for paying debts existing at the ratification of the Constitution; and the said levy was made on a day not authorized by laws of Arkansas, all of which will more fully appear by reference to a copy of the said order of said county court, making said
[26] levy, hereto attached and made part hereof, marked "Exhibit E."

Wherefore, having fully answered, he prays to be discharged with his reasonable costs.

JOHN G. B. SIMMS,
Attorney for Abner Gaines, Collector, etc.
D. H. REYNOLDS,
Also Counsel for Gaines.

(Exhibit to response of Gaines.)

IN THE CHICOT CIRCUIT COURT,
JANUARY TERM, 1885.

Levi H. Springer, plaintiff,
against
Abner Gaines, as Collector of Chicot County, defendant.
Complaint in Equity.

The plaintiff, L. H. Springer, states that he is the owner of east half section 30, township 18 south, range 2 west, in said county of Chicot, assessed for taxation for 1884, at $320; and of personal property assessed for taxation for 1884, at $360; as was also the real and personal property of other taxpayers of said county, assessed for taxation for 1884. That said property of plaintiff and of other tax-

payers in said county, was not assessed for taxation for
[27] 1884, as required by law, as plaintiff is informed and
believes; that said real estate was assessed in 1883, for 1883 and 1884, and in making said assessment, said assessor failed to give notice that he would attend, to meet the taxpayers at the voting places in the several townships; that said assessor failed to attend at the voting places to meet the taxpayers; that said assessor appointed an assistant, but did not assign to him a division or part of the county to assess the property therein; that in some of the townships the assistant alone, and in other townships the assistant and the assessor, at such places as to them was convenient, and without regard to the places fixed by law,
[28] met such of the taxpayers as had notice, and chose to attend and give a list of their lands; that the lists and value of the real estate was, in most instances, fixed by the assistant, and in other instances by the assessor, and lists and values so fixed, were placed on the assessor's books, as furnished by the Clerk, and returned into the office of the Clerk of the County Court, without the oath of the assistant as to the correctness of the valuations and assessments made by him alone, or where he made part of the assessment and the assessor made the other part; but the assessor in disregard of the law and of the facts, returned said list with his oath alone attached thereto; and plaintiff is advised that assessment of real estate for taxation for the years 1883 and 1884 was not made as required by law, and that, being illegal, no valid levy of taxes could be made on said assessment.

[29] And plaintiff further states that on June 19, 1883, two of the three persons appointed by the Governor to constitute a board of equalization, met at the county seat, and after taking the oath of office, attempted to organize themselves into a board of equalization by electing one of the two as president, and with the board so organized, the Clerk laid before it the said assessment list of real estate, and said board endeavored to equalize the same upon the idea that the buildings and improvements added to the value of the entire body of cleared lands of the plantation or farm on which they were situate, instead of adding to the value of the particular tract or lot upon which such buildings and improvements were situate, as required by law, and changes were made in said assessment lists accordingly; and plaintiff is advised that said board was not legally
[30] constituted, while it consisted of two members only, and was not, as thus organized, authorized to act

upon said assessment list, and that such acts vitiated the assessment as returned by the assessor, and the action of the board if legally organized, in adopting such rule to equalize, and in changing the list accordingly, acted in violation of law, and rendered such assessment void, if otherwise legal; and that said assessment of real estate for taxation for 1883 and 1884, was not legally equalized as required by law, and that there is no valid assessment of the real estate of Chicot County for taxation for 1884, and that no valid levy of taxes could be made thereon.

And plaintiff further states that the assessment of the personal property for taxation for 1884, was not made as required by law; that the assessor failed to give the notices and to attend at places fixed by law, to meet the tax-
[31] payers to receive lists of their property, and to value the same, and that the assessment list was not properly verified by the affidavits of the assessor and his assistants, and that by reason of the irregular and imperfect assessment so made, many of the largest owners and holders of personal property were left out of the assessment list entirely, and so increasing the burdens to be borne by those placed in the said assessment list, and the board of equalization wholly failed to meet to act on the lists as returned by the assessor; and plaintiff is advised that there is no valid assessment of the personal property of Chicot County for 1884, and there can be no valid levy of taxes made on said invalid assessment.

And plaintiff further states that various persons having judgments in the Circuit Court of the United States for the
[32] Eastern District of Arkansas, against the county of Chicot on coupons of bonds issued to the L. R. P. B. & N. O. R. R. Co., and to the M. O. & R. R. R. R. Co., amounting in the aggregate to over one hundred and twenty thousand dollars, without waiting for a refusal on the part the County Court to levy a tax to pay said judgments, obtained various writs of mandamus from said Court (U. S.), commanding said County Court to levy a tax sufficient to pay the aggregate amount of said judgments; and after the costs had accrued by the issuance, etc., of said writs of mandamus, in disregard of said writs and of the interest of the taxpayers of the county, who had not sought to have the amount of said judgments divided into installments for payments, an attorney of some of said judgment creditors, with or without the consent of the
[33] others of said attorneys and creditors, by letter, addressed to the County Judge of the county, de-

manded a levy of twenty mills on the dollar in place of the levy required by said writs of mandamus; and afterwards on the third Monday in July, 1884, the County Judge, and some of the Justices of the Peace, assuming to be a County Court for the purpose of levying taxes, acting under or in deference to said demand, levied a tax of twenty mills on the assessment lists of 1884. And that said judgments are upon coupons of bonds issued fraudulently, and for which the county and its people never received one dollar of bonefit; the receiving and the issue of bonds being in effect the taking of something for nothing, or in other words, a clear steal of $200,000 from the taxpayers of the county, if payment thereof may be enforced from them under the forms of law; and so having no
[34] moral obligation on part of the taxpayers to ever pay one dollar, if same can be avoided by law.

And the plaintiff further states that the County Court created under section 30, article 7, of the Constitution of Arkansas, for levying taxes and making appropriations for the expenses of the county, is, by section 9 of "An act to revise and amend the revenue laws of Arkansas," approved March 31, 1883, required to meet for that purpose on the first Monday in July in each year, at which time the taxpayers of the county may attend and object to the levy of any specific tax for illegality.

That said County Court for the county of Chicot failed to meet on the first Monday in July, 1884, but the County Judge of said county, and some of the Justices' of the Peace thereof, met at the court-house on the third Monday in July, 1884, without authority of law, and assum-
[35] ing to act as a County Court "for the purpose of levying the county taxes and making appropriations for the expenses of the county," did levy, among other taxes, a tax of twenty mills on the dollar to pay on the judgments against said county in pursuance of the demand made by letter as aforesaid, and against the objection of certain taxpayers of the county who were present, and urged a levy in compliance with said writs of mandamus.

And plaintiff is advised that said levy of twenty mills was made without proper authority and at a time not authorized by law, and same has no legal or binding force as a valid lien on the property of said county.

The plaintiff further states that notwithstanding the illegality of said assessment for 1884, and the illegality of the equalization of the real estate, and the failure to
[36] equalize the assessment of the personal property and illegal effort to divide up the payment of the judg-

ments against the county, and fix a levy of twenty mills in place of the levy ordered by the court, and the failure of the County Court to meet to levy taxes at time fixed by law, and the meeting of the County Judge and some of the Justices of the Peace on a day not authorized by law, and the levy by them of twenty mills without authority of law or order of court, the said twenty mills have been extended as a tax on the tax books of the county, and said tax books have been placed in the hands of the defendant Gaines, as collector, with a warrant commanding him to collect said tax, with other taxes extended on said tax books, and unless restrained he will proceed to collect said tax of twenty mills from plaintiff and from the other taxpayers of said county to their great wrong and injury.

[37] And plaintiff further states that the assessment lists of real estate amounts to $983,032, and the assessment list of personal property amounts to $346,385, and making $1,329,417 in the aggregate, and making for the tax upon all the property of the county as assessed the sum of $26,528.34, and the sum of $13.60 on the said property of this plaintiff.

The premises considered, plaintiff, on behalf of himself and other taxpayers of Chicot County, prays a temporary restraining order directed to said defendant as such collector enjoining and restraining him and his deputies from collecting said tax of twenty mills, or any part thereof, from plaintiff, and from any taxpayer, and from any property in said county, until the further order of this court; and that said defendant be summoned to answer this complaint, and that upon the final hearing of this cause, that such

[38] injunction be made perpetual; and for other relief.

D. H. Reynolds.

STATE OF ARKANSAS, }
COUNTY OF CHICOT. }

The plaintiff, Levi H. Springer, says that he believes the statements in the foregoing complaint are true.

L. H. Springer.

Sworn to before me, on this twenty-first day of November, 1884.

[Seal.] George T. Wilkinson, Clerk.

Having examined the annexed and foregoing complaint of Levi H. Springer, alleging the illegality of a tax of twenty mills levied on his property, and property of other taxpayers of Chicot County, to pay judgments in the

Circuit Court of the United States for the Eastern District of Arkansas, against said County of Chicot, and praying for a temporary restraining order to enjoin and
[39] restrain Abner Gaines, as collector of said county, from collecting said twenty mill tax, or any part thereof, until the further order of the court; and being of the opinion that such temporary restraining order should be granted, and that a bond in the sum of $2,500 will be sufficient to protect the rights of all parties in interest until the case can be examined into by the court in term time.

It is ordered that upon said plaintiff filing in the office of the clerk of the Chicot Circuit Court, a bond to be approved by said clerk, conditioned to pay to defendant, Abner Gaines, as collector of Chicot County, for the benefit of whom it may concern, the damages not exceeding $2,500, which may be sustained by reason of the injunction in this action, if it is finally decided that said injunction ought not to have been granted.

[40] Said clerk shall issue a temporary restraining order, directed to said defendant, enjoining and restraining him from collecting, or attempting to collect, said twenty mill tax, or any part thereof, until the further order of this court.

Given by me as Judge of the Tenth Judicial Circuit of the State of Arkansas, at Warren, Ark., on this the twenty-sixth day of November, 1884.

JOHN M. BRADLEY, Judge.

On which complaint the following indorsement appears: Filed and writ issued this December 30, 1884.

GEORGE T. WILKINSON, Clerk.

Which writ, issued on the foregoing complaint, is as follows, to wit:

[41] Summons in action by equitable proceedings.

State of Arkansas, to sheriff of Chicot county:

You are commanded to summon Abner Gaines, as collector, to answer, in twenty days after the service of this summons, upon a complaint in equity, filed against him in the Chicot Circuit Court, by Levi H. Springer, and warn him that upon his failure to answer, the complaint will be taken for confessed; and you will make due return of this summons on the first day of the next January term of said court.

Witness my hand and seal of said court, this thirtieth day of December, 1884.

[SEAL.] GEORGE T. WILKINSON, Clerk.

Which order of injunction is as follows:

[42] Levi H. Springer

v.

Abner Gaines, as collector of Chicot County.

Order of Injunction.

The State of Arkansas to Abner Gaines, as collector of Chicot County, Arkansas:

You and each of your deputies are hereby enjoined and restrained from collecting, or attempting to collect, from the plaintiff, and from any taxpayer, and from any property in said county, the twenty mill tax, or any part thereof, levied on the third Monday in July, 1884, to pay certain judgments obtained in the Circuit Court of the United States for the Eastern District of Arkansas, until the further order of this court.

Witness my hand and seal of said court, hereto attached, this thirtieth day of December, A. D. 1884.

[SEAL.] GEORGE T. WILKINSON, Clerk.

Indorsed: Filed January 2, 1885.

RALPH L. GOODRICH, Clerk.

By W. P. FEILD, D. C.

[43] Exhibit "E" to response of Gaines.

WHEREAS, It has happened that the time fixed by law for holding the County Court, and the Circuit Court, falls on the same day, to wit, on the first Monday in July, 1884;

Therefore be it remembered that on this, the twenty-first day of July, 1884, being the time fixed by law for the holding of the County Court, in the event of the happening of the meeting of the said two courts on the same day.

Court met in the court room in pursuance of law in this case made and provided. Present: The honorable H. C. Newsome, presiding Judge; W. W. White, sheriff, and George T. Wilkinson, clerk.

The Circuit Court still being in session, ordered that this court adjourn to the sheriff's office, in the lower story, in the southeast corner of the court-house building,

[44] which was accordingly done.

The opening of the same having been proclaimed in due form, when the following proceedings were had, to wit:

Ordered that the clerk call over the roll of justices, which was done, and the following named answered to their names, to wit, John Moher, L. Johnston, H. H. Johnson,

L. H. Springer, John F. Scott, S. F. Horner and J. M. Johnson, making seven (7) in all present. The following named were absent, to wit, Levi Hendread, G. Amborn, H. P. Walsh and C. H. Kincaid, a majority of the justices of the county (the same constituting a quorum) being present, the court proceeded to the making of appropriations and levy of taxes, as the law contemplates.

In the matter of railroad bonds, levy of judgment tax.

Under and by virtue of the authority of this court,
[45] conferred by the act of the General Assembly of the State of Arkansas, approved July 23, 1868, entitled, "An act to be entitled an act to authorize counties to subscribe stock in railroads," and the payment of judgments against this county, rendered by the Circuit Court of the United States upon coupons, for interest, attached to bonds issued by this county under said act, there is hereby levied a tax of twenty mills upon the dollar, of all the taxable property of this county, payable only in United States currency, and to be collected in the same manner and at the same time that other county taxes, this day levied, are collected; and the proceeds of said tax are hereby ordered to be paid into the registry of said the Circuit Court of the United States, when collected, to be applied *pro rata*
[46] to the payment of the judgments of said court against this county, mentioned in sundry writs of mandamus heretofore, from said court, issued and to this court directed.

STATE OF ARKANSAS, }
COUNTY OF CHICOT. }

I, George T. Wilkinson, clerk of the Circuit Court and ex officio clerk of the County Court, within and for the county and State aforesaid, do hereby certify that the preceding two pages, and the above writing on this page contain true and correct copies of the orders made and entered in the matters therein mentioned, as the same appears of record in Record Book "H" of the proceedings of said County Court, on pages 90 and 94, in my office.

Witness my hand and the seal of said County Court, hereto affixed, this the third day of January, 1885.

[SEAL.] GEORGE T. WILKINSON, Clerk.

[47] And on January 6, 1885, the following order was entered, to wit:

United States ex rel. Austin Corbin, J. K. O. Sherwood, Charles E. Lewis, E. H. Shirk, F. B. Loomis and Charles R. Bissell,

v.

Abner Gaines, as collector, and George T. Wilkinson, as Clerk of Chicot County Arkansas.

And now this matter came on to be heard, upon the relation of the relators, for a peremptory mandamus to Abner Gaines, as collector, and George T. Wilkinson, as clerk of the County of Chicot, State of Arkansas, and the several responses of the said Gaines and Wilkinson, as collector and clerk, to the rule issued in pursuance of said relation, said relators appearing by B. C. Brown, E. W. Kimball and Charles P. Redmond, and said respondents by D. H. Reynolds and J. G. B. Sims, and the court

[48] having heard the same, and being well advised in the premises, doth consider and adjudge that said several responses be held for naught.

And it is now here by the court ordered, considered and adjudged, that said Abner Gaines, as collector of Chicot County, Arkansas, do proceed, forthwith, to collect, in United States currency only, the taxes levied by the County Court of Chicot County, for the year of 1884, to wit, two *per centum* of the assessed value of the taxable property of said county, in pursuance of the various writs of mandamus issued by this court to said county court, for the payment of the various judgments theretofore rendered by this court upon the coupons of the bonds of said county, issued in aid of railroads, under the act of July 23, 1868.

And that this he do the same as if no injunction

[49] had been made, or issued to him by the Circuit Court of Chicot County, restraining or enjoining the collection of said tax; and that the money so collected, without diminution or costs, except legal commissions, be forthwith paid into the registry of this court.

The said collector will collect the said tax as other taxes are collected, but without penalty upon all such taxes which may be paid before the day when by law he is required to advertise real estate for sale for such delinquent tax.

And that said clerk proceed to do and perform in the proper manner, and at the proper time, all and singular, and each and every act and thing by law required to be

done in respect of taxation, for the special tax of twenty mills levied by the County Court of said county, for the year of 1884, to pay judgments of the relators recovered against said county in this court, the same as to
[50] other and general taxes levied for the year 1884; and this he do the same as if no injunction had been made or served upon him, by and from the Circuit Court of Chicot County, Arkansas.

It is further ordered that a duly certified copy of this order shall forthwith be served by the marshal on said collector and clerk.

To which ruling and order of the court respondent excepts; and time is given him to prepare and file his bill of exceptions.

And, on January 16, 1885, the following proceedings were had, to wit:

[51] United States ex rel. Austin Corbin, J. K. O. Sherwood, Charles E. Lewis, E. H. Shirk, F. B. Loomis and Charles R. Bissell,

v.

Abner Gaines, as Collector, and George T. Wilkinson, as Clerk of Chicot County, Arkansas.

Come Abner Gaines, as collector, and George T. Wilkinson, as clerk of Chicot County, Arkansas, by D. H. Reynolds, Esq., their attorney, and filed their supersedeas bond, which is approved by the court, and also their writ of error and citation which are allowed, signed and sealed by the court.

And, on January 19, 1885, the following proceedings were had, to wit:

[52] United States ex rel. Austin Corbin, J. K. O. Sherwood, Charles E. Lewis, E. H. Shirk, F. B. Loomis and Charles R. Bissell,

v.

Abner Gaines, as Collector of Chicot County, Arkansas, and George T. Williamson, Clerk of the County Court of said county.

Be it remembered, that at the hearing of this case on January 6, 1885, upon the petition of relators and response of the collectors and the response of the clerk, it was agreed and admitted that peremptory writs of mandamus were duly issued from this court commanding the County Court of Chicot County to levy a tax to pay judgments

which were duly rendered in this court in favor of the relators and others, upon coupons cut from bonds issued by said county, under the provisions of an act of the General Assembly of the State of Arkansas, approved July
[53] 23, 1868, and entitled "an act to authorize counties to subscribe stock in railroads," which judgments amount in the aggregate to about $140,000.

The following is a copy of one of said writs:

[54] UNITED STATES OF AMERICA,

EASTERN DISTRICT OF ARKANSAS.

In the Circuit Court of the United States for said Eastern District.

United States ex rel. Charles E. Lewis,

v.

Chicot County.

The President of the United States to the County of Chicot and the County Judge..... ..... and Justices of the Peace of said county, constituting the County Court of said county, for the purpose of levying taxes:

WHEREAS, It appears of record in our said court that the said relator herein, upon the twenty-fourth day of April, 1878, recovered judgment in our said court against said county for the sum of $6,638.78 debt and damage, and $106.66 cost of suit, with six per cent. interest per annum thereon, upon certain coupons issued by said county, under provisions of an act approved July 23, 1868, entitled an act to be entitled an act to authorize counties to subscribe stock in railroads, which judgment is in full force, less credits;

And, whereas, by the provisions of said act power is given to, and it is made the duty of said County Court to levy a special tax annually sufficient to pay said coupons as they mature (which power and duty is in no manner restricted or impaired by the Constitution of the State of 1874). And, whereas, said county has neglected and refused to pay said judgment, and upon due notice, has failed to show any sufficient cause against the issue of a peremptory writ of mandamus to compel the performance of said duty;

Now, therefore, We command you and each of you so composing said County Court for the levy of taxes, to meet and convene on the first day fixed by law in July,

1884, for levying taxes for county purposes at the place appointed by law, and then and there levy a special tax on all taxable property of said county, Chicot, payable in United States currency only, to pay the said judgment, interest and costs, and costs of this proceeding, and that you cause the same to be collected at the same time and in the same manner other taxes are collected, and when collected, that you cause the same to be paid into the registry of our said court at Little Rock, without delay; and this levy, collection and payment you will make and cause to be made in addition to all other taxes you are by law authorized and required to levy at the same time. And hereof fail not, and make due return, in writing, to our said Circuit Court, on the first day of its next term, how you have executed this writ.

In testimony whereof, Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United [SEAL] States, has caused the seal of said Circuit Court to be hereunto affixed, this tenth day of May, A. D. 1884, and in the one hundred and eighth year of our independence.

Attest: RALPH L. GOODRICH, Clerk.
By W. P. FEILD, D. C.

[NOTE —The service of this writ on the County Judge, alone, binds the county and the County Court to the performance of the commands of the writ. It is the duty of the County Judge to lay the writ before the County Court when convened to levy county taxes.]

[55] The following indorsements appear on said writ:

"Twenty mills must be levied for 1884."

"In obedience to the within writ, I have summoned the within named Chicot County, by delivering into the hands of H. C. Nusome, County Judge of said Chicot County, a true and correct copy of the same at his residence, in Columbia, Chicot County, in the Eastern District of Arkansas, on this third day of July, A. D., 1884."

"D. B. RUSSELL, Marshal,
"By H. A. ORLOPP, D. M.

"Marshal's fees:

"Service	$ 2 00
"140 miles	8 40
	$10 40

"Returned and filed July 15, 1884.
"RALPH L. GOODRICH, Clerk,
"By W. P. FEILD, D. C."

[56] All others, fifty-one in number, were of like tenor and effect, except as to names of relator and amount of judgment.

That at and after said writs issued and were served by permission of this court, said creditors, by indorsements on said writs and otherwise, informed said County Court that the levy of twenty mills on the dollar of the taxable property of said county, amounting to $1,329,417, which tax would produce about $26,528.34 less delinquencies and expenses of collection, would be a satisfactory compliance with the demands of said writs, or satisfactory levy of tax for 1884; and that said collection should be distributed *pro rata* among said judgment creditors, towards satisfying said judgments; that no one of said creditors would receive exceeding $1,800, of said collection, and no taxpayer of said county would pay on said levy over $3,000;

[57] that said tax of twenty mills was duly levied as shown by the order of the said County Court levying the same, a copy of said order being an exhibit to the response of the collector, and said tax was extended on the tax books of the county by its clerk, and that said tax books, were, in November, 1884, placed in the hands of the respondent, Gaines, as collector; that respondent was engaged in collecting said taxes when the rule in this proceeding was served on him, on December 26, 1884, and continued to so collect, and had collected a small part thereof, when on December 30, 1884, he was by the Judge of the Circuit Court of Chicot County, by order made on November 26, 1884, enjoined and restrained from collecting said twenty mills tax, until the further order of that court; and that said collector has not been restrained by the State Court from collecting any

[58] other taxes levied at the same time with the said tax of twenty mills; that, in obedience to said injunction, respondent has refrained from collecting said tax of twenty mills, and that said injunction suit is still pending and undetermined; that said writs of mandamus directing the levy of said tax did not, in terms, include the clerk or the collector of said county, nor were said writs served on either of them.

These are all the facts in the case not embraced in said petition and response.

And thereupon, after argument of counsel, the court made the following ruling and decision:

1. That this court acquired jurisdiction of the subject matter of the assessment, and of the levy and the collec-

tion of taxes in Chicot County for 1884, so far as the same related to the tax directed to be levied by its writs of mandamus, and that the levy of a less tax than ordered in the writs, when made at the request of the relators by permission of the court, did not waive or abridge such jurisdiction, and that the State court had no jurisdiction to inquire into the assessment, the levy or the collection of the tax, so far as the same related to or effected the twenty mills tax, or to restrain the collection of such tax.

[59]

2. That the alleged defects in said assessment and levy, as set out in the response of the collector and the exhibits thereto, are not sufficient to invalidate the assessment and levy, or to warrant a court in restraining the collection of a tax so levied thereon.

3. That the injunction by the State court is no defense to this application for a mandamus to enforce the collection of said tax of twenty mills.

4. That the County Court of Chicot County, that levied said twenty mill tax, was held and the tax levied at the time prescribed by law.

[60]

5. That the writs of mandamus, as prayed for against said collector and against said clerk, should be granted, and it will be accordingly so done.

To which rulings and decision of the court the respondents at the time excepted, and by leave of court, have reduced the admitted facts, not fully stated in the petition and response, and the said rulings and decisions to writing, and here present the same to be signed and sealed and made a part of the record in this case, which is accordingly, on this seventh day of January, A. D. 1885.

HENRY C. CALDWELL, Judge.

And be it further remembered that on said seventh day of January, 1885, after the decision and judgment of the court were rendered and bill of exceptions noted, said respondent prayed for a writ of error to the Supreme Court of the United States, and that the same operate as a supersedeas upon respondents' filing a bond conditioned according to law, and that the court fix the amount of the said bond, and thereupon the court fixed the amount of said bond at the sum of ($3,000) three thousand dollars, and ordered that upon the filing and approval of such bond, the same to operate as a supersedeas, that the writ of error be granted, and respondents excepted to so much of said ruling as fixed the amount of said bond at three thousand dollars as being excessive.

[61]

And it is ordered by the court that this entry bear date as of January 16, 1885.

HENRY C. CALDWELL, Judge.

Which supersedeas bond is in the words and figures following, to wit:

[62] IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE EASTERN DISTRICT OF ARKANSAS.

United States ex rel. Austin Corbin *et al*,

v.

Abner Gaines, as Collector of Chicot County, Arkansas, and George T. Wilkinson, clerk of said county.

Supersedeas Bond.

Know all men by these presents, that we, Daniel H. Reynolds, Robert E. Craig, Richard M. Gaines and George Read, are held and firmly bound unto Austin Corbin and others, the relators in the above entitled cause (being judgment creditors of Chicot County, Arkansas, at whose instance peremptory writs of mandamus were issued by said court commanding the County Court of said county to levy a tax, in 1884, to pay on their judgments) in the full and just sum of three thousand dollars, to be

[63] paid to said Austin Corbin and others, the said relators, their certain attorneys, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this —— day of January, 1885.

Whereas, lately at a term of the Circuit Court of the United States for the Eastern District of Arkansas, begun and held in the city of Little Rock on the fourth Monday in October, 1884, on a day in said term, in a suit depending in said court between United States ex rel. Austin Corbin and others, and Abner Gaines, as Collector of Chicot County, Arkansas, and George T. Wilkinson, as Clerk of the County Court of said county of Chicot, a judgment was rendered against said Abner Gaines and against said George T. Wilkinson, and the said

[64] Abner Gaines and George T. Wilkinson having obtained a writ of error and filed a copy thereof in clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation to the said Austin Corbin and others, said relators, them citing and admonishing to

be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday in October next.

Now, the condition of the above obligation is such that if the said Abner Gaines and the said George T. Wilkinson shall prosecute their writ of error to effect, and answer all damages and costs, if they shall fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

D. H. Reynolds, [Seal.]
R. E. Craig, [Seal.]
R. M. Gaines, [Seal.]
George Read. [Seal.]

Indorsed: Filed January 16, 1885.
Ralph L. Goodrich, Clerk.

[65] Which citation is as follows:

[66] THE UNITED STATES OF AMERICA—Greeting:

To Austin Corbin, J. K. O. Sherwood, E. H. Shirk, C. E. Lewis, F. B. Loomis and Charles R. Bissell:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday in October next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the Eastern District of Arkansas, wherein Abner Gaines, as Collector of Chicot County, Arkansas, and George T. Wilkinson, Clerk of the County Court of said county, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Henry C. Caldwell, judge of the District Court, this sixteenth day of January A. D. 1885.

[Seal].

Henry C. Caldwell, District Judge.

Service acknowledged for Charles R. Bissell, January 16, 1885.

C. P. Redmond, Attorney.
Eben W. Kimball, Attorney.
B. C. Brown, Attorney.

[67] UNITED STATES OF AMERICA,

EASTERN DISTRICT OF ARKANSAS.

I, Ralph L. Goodrich, Clerk of the Circuit Court of the United States for the Eastern District of Arkansas, in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct and compared copies of the originals remaining of record in my office.

In witness whereof, I have hereunto set my hand and the seal of said court, this, the twenty-fourth day of January, in the year of our Lord one [SEAL.] thousand eight hundred and eighty-five, and of the Independence of the United States of America, the one hundred and ninth.

Attest: RALPH L. GOODRICH, Clerk.

Supreme Court of the United States of America

No.....

ABNER GAINES, as Collector, and GEORGE T. WILKINSON, as Clerk of Chicot County, Arkansas,

Plaintiffs in Error,

vs.

AUSTIN CORBIN, J. K. O. SHERWOOD, E. H. SHIRK, C. E. LEWIS, F. B LOOMIS and CHAS. R. BISSELL,

Defendants in Error.

Error to the Circuit Court of the United States for the Eastern District of Arkansas.

MOTION TO DISMISS—OR AFFIRM—NOTICE THEREON

AND

BRIEF FOR DEFENDANTS IN ERROR.

B. C. BROWN,
E. W. KIMBALL,
C. P. REDMOND,
For Defendants in Error.

LITTLE ROCK:
UNION PRINTING COMPANY, LAW PRINTERS.
1885.

In the Supreme Court of the United States

OF AMERICA.

MOTION TO DISMISS

—AND—

MOTION TO AFFIRM.

ABNER GAINES, as Collector, and GEORGE T. WILKINSON, as Clerk of Chicot County, Arkansas, *Plaintiffs in Error*,

No. —. v.

AUSTIN CORBIN, J. K. O. SHERWOOD, E. H. SHIRK, C. E. LEWIS, F. B. LOOMIS, and CHARLES R. BISSELL, *Defendants in Error.*

In Error to the Circuit Court of the United States for the Eastern District of Arkansas.

And now come the defendants in error and relators in the court below, Austin Corbin, J. K. O. Sherwood, E. H. Shirk, C. E. Lewis, F. B. Loomis and Charles R. Bissell, and move the court to dismiss this cause and the writ of error issued herein to the Circuit Court of the United

States for the Eastern District of Arkansas, on the sixteenth day of January, 1885.

First. Because said writ of error is sued out upon an order of said Circuit Court for the enforcement of its peremptory writ of mandamus, *theretofore* duly and regularly issued, and served in accordance with law and the practice of said court, which order is not *a final judgment* of said Circuit Court, and is, therefore, not such a judgment, order or proceeding as can legally be brought to this court by writ of error, and is not within the jurisdiction of this court.

Second. Because the writ is not sued out by the real parties in interest, the Collector and Clerk being only nominal parties.

Third. Because the record does not contain any "assignment of errors," as required by Sec. 997, R. S.

Fourth. Because the record does not contain any "prayer for reversal," as required by Sec. 997, R. S.

Fifth. Because there is no sufficient supersedeas bond (the bond by order of court below being made a supersedeas.) By reason of—

(*a*) The bond is not dated.

(*b*) There are no proper obligees named in said bond.

(*c*) There is no justification of the sureties or other showing of their sufficiency.

(*d*) The penalty of the bond is not sufficient as a supersedeas.

Sixth. The record shows upon its face that the writ is sued out upon frivolous grounds.

MOTION TO AFFIRM.

The defendants in error also move the court to affirm the judgment and order of the Circuit Court, on the ground that, although the record may show that this court has jurisdiction, it is manifest that the writ of error was sued out for delay only, and that the question on which the jurisdiction depends is so frivolous as not to need further argument.

CHAS. P. REDMOND,
B. C. BROWN,
E. W. KIMBALL.

In the Supreme Court of the United States

OF AMERICA.

NOTICE.

ABNER GAINES, as Collector, and GEORGE T. WILKINSON, as Clerk of Chicot County, Arkansas, *Plaintiffs in error*,

No. —. v.

AUSTIN CORBIN, J. K. O. SHERWOOD, E. H. SHIRK, C. E. LEWIS, F. B. LOOMIS, and CHARLES R. BISSELL, *Defendants in Error.*

Error to the Circuit Court of the United States for the Eastern District of Arkansas.

To Abner Gaines, as Collector, and George T. Wilkinson, as Clerk, of Chicot County, Arkansas; and to D. H. Reynolds and J. G. B. Sims, Esqs., Attorneys for Gaines and Wilkinson:

GENTLEMEN:—You will please take notice, and you are hereby notified—

That the defendants in error in the above entitled matter will, on Monday, the second day of March, 1885, move the

Supreme Court of the United States to dismiss the writ of error sued out by you to the Circuit Court of the United States for the Eastern District of Arkansas, in the above entitled cause, for the reasons stated in said motion and the brief herewith served upon you.

And will also at same time and place move said Supreme Court to affirm the judgment and order of the Circuit Court in this matter, because it is manifest that said writ of error was sued out for delay only, and that the questions raised thereby are too frivolous to need further argument.

B. C. BROWN,
E. W. KIMBALL,
C. P. REDMOND.

In the Supreme Court of the United States

OF AMERICA.

ABNER GAINES, as Collector, and GEORGE T. WILKINSON as Clerk of Chicot County, Arkansas, *Plaintiffs in Error*,

No.— v.

AUSTIN CORBIN, J. K. O. SHERWOOD, E. H. SHIRK, C. E. LEWIS, F. B. LOOMIS, and CHARLES R. BISSELL, *Defendants in Error.*

Error to the Circuit Court of the United States for the Eastern District of Arkansas.

BRIEF FOR DEFENDANT IN ERROR,

ON MOTION TO DISMISS OR AFFIRM.

STATEMENT OF CASE.

The defendants in error, at various times, obtained various and several judgments against the county of Chicot,

State of Arkansas, upon coupons cut from bonds issued by said county, in 1872, for stock subscribed to certain railroads, under the provisions of an act of the General Assembly of the State of Arkansas, approved July 23, 1868, entitled "An act to authorize counties to subscribe stock in railroads."

On the ——— day of May, 1884, peremptory writs of mandamus were duly and regularly issued in each case to the County Court of said county, requiring said County Court to levy and collect a tax upon the taxable property of said county for the year 1884, to pay said judgments—said tax when collected, to be paid into the registry of said Circuit Court.

Said peremptory writs of mandamus were duly served upon the County Court of said county, which County Court obeyed said writs, and levied a tax of twenty mills upon the property of said county, which levy of twenty mills was not sufficient to pay said judgments, but which was, by convention between the said County Court and defendants in error, considered as a satisfactory levy for the year 1884—which tax of twenty mills was duly extended on the tax books of said county, for the year 1884, by the County Clerk (one of the plaintiffs in error, herein.)

Said tax books were placed in the hands of said Gaines, the County Collector (and one of the plaintiffs in error), for collection.

Whereupon said collector commenced to collect said taxes.—

When one Levi H. Springer filed his bill in the Cir-

cuit Court of Chicot County, Arkansas, setting up irregularities in the assessment, equalization and levy of the taxes for said county, for the year 1884 and prayed for and obtained an injunction from said State court, on the collector (one of the plaintiffs in error), restraining him from collecting said twenty mill tax; but not restraining him from the collection of the other taxes (State, county and school) on the said tax books.

Whereupon said collector refrained and desisted from collecting the said twenty mill tax, but continued to collect and does collect the other taxes (State, county and school) on the said tax books.

Whereupon, the relators and defendants in error, upon relation filed, obtained from the Circuit Court of the United States for the Eastern District of Arkansas a rule upon said collector, to show cause why he should not proceed to collect said twenty mill tax in accordance with the peremptory mandamus of said United States Circuit Court, *theretofore* duly issued and served upon the County Court of said county.

And also upon the Clerk of said county to show cause why he should not perform his various duties as Clerk in relation to the collection of said tax, as prescribed by law—

To which rule said collector and clerk, respondents, made answer—

The clerk, that he was willing and ready to perform his duties in question.

The collector that he was restrained from collecting said tax by the injunction from said State court.

Whereupon, the matters arising upon said rule and the responses thereto were submitted to the court. And the court, upon consideration thereof, ordered that said clerk should proceed to the performance of his duties in the premises as required by law.

And that said collector proceed to the collection of said twenty mill tax, notwithstanding said injunction.

To which order of the court the said collector and clerk—plaintiffs in error—excepted, and sued out the writ of error herein.

GROUNDS OF MOTION TO DISMISS.

First—The first ground for the motion to dismiss is, that this court has no jurisdiction, because the order of the court excepted to, is not a final judgment—from which a writ of error will lie. The order of the court being not upon an original proceeding for awarding a mandamus, but on an order to enforce a peremptory mandamus theretofore (in May, 1884), issued to the County Court to compel the levy and collection of a tax to pay relators' judgments.

The clerk entered the order of the County Court for the twenty mill tax, reciting therein the peremptory mandamus of the United States Court; the collector found the twenty mill special tax on his taxbooks, for the purpose of paying the United States Court judgments. The clerk and collector were both cognizant of the mandamus for

the twenty mill tax issued in May, 1884; they knew in fact, and as officers of the county were legally charged with notice of the peremptory mandamus to the County Court, for the levy and collection of this tax; and of their duty, as county officers, to obey it; although, they were not specifically and in terms named in the writ.

It is contended that this is a proceeding to enforce the peremptory writ issued to the County Court, in May, 1884. That it is not an original proceeding for the award of a peremptory mandamus, from which this court has held a writ of error will lie.

A writ of error could have been taken (under the rulings of this court) to the order awarding the peremptory writ to the County Court to levy and collect this tax (that was not done), but no writ of error will lie to the order in this matter, because this is simply an interlocutory order, in the nature of an attachment for contempt for refusing obedience to the peremptory writ already issued to the County Court.

It was made the duty of the county authorities, by the statute authorizing the issue of these bonds, to *levy and collect* a tax to be collected as other couty taxes, to pay the bonds and coupons on which these judgments were recovered.

Personal service of that writ upon the clerk and collector was not necessary; service upon the County Court bound the county and all officers of the county having any

function to perform in the levy and collection of this tax.

See—

High on Extraordinary Remedies, sec. 573.

King v. Mayor of Fowney, 5 Dow & Ry., 614.

The Mayor v. Lord, 9 Wall., 413.

Commissioners v. Sellew, 99 U. S., 624.

Labette Co. v. United States, ex rel. 112 U. S., 217.

The original mandamus to the County Court was therefore addressed, substantially (if not in terms), to the collector and clerk, and its commands included them.

This, then, is merely a proceeding to enforce that writ. And that writ having issued, and no writ of error being taken to the order awarding it, these respondents have had their day in court. And the order now made for the enforcement of that writ, is an interlocutory proceeding, and not a final judgment from which a writ of error will lie.

Second—The second ground for dismissal is, that the writ of error is not sued out by the real parties in interest; the clerk and collector, as such, manifestly have no interest in this proceeding; they are mere nominal parties; their duties in the premises are only ministerial. The real parties in interest are the judgment creditors, defendants in error on the one side, and the taxpayers of the county, or their representative, the County Court, which

administers the county finances, upon the other side. But the clerk and collector have no interest, whatever, in the event of this proceeding.

It is held in Farmers Loan and Trust Company v. Waterman, 106 U. S., 265—Syllabus—"A party to a suit can not appeal from a decree therein rendered, if he is not thereby affected."

Third—The third ground of dismissal is, that the record does not contain any assignment of errors, as required by section 997, Revised Statutes.

"There shall be annexed to and returned with any writ of error for the removal of a cause, at the day and place therein mentioned, an authenticated transcript of the record, an assignment of errors, and a prayer for reversal, with a citation to the adverse party."

That an assignment of errors shall accompany the writ, is a positive requirement of the statute, and is reinforced by a recent amendment of the rules of this court, previous to the issuance of the writ in this cause. (Rule 8, sec. 1.) It is submitted, that a record that does not contain what the statute and the rules of this court positively require, is not sufficient to maintain its standing on the docket of this court.

Section 3, Rule 8, of this court provides that no cause shall be heard here until there is a complete record. Can the record be complete without an assignment of errors as prescribed by the statute and rules of this court?

Fourth—The fourth ground is substantially the same as the preceding.

There is NO PRAYER FOR REVERSAL in the records a required by Section 997, Revised Statutes.

Fifth—The fifth ground for dismissal is, that there is no sufficient or proper bond filed, as required by Section 1000, Revised Statutes.

a—The bond has no date (Record, m. p. 63), and is therefore informal, imperfect and insufficient.

b—There are no proper obligees named in the bond; it is given to Austin Corbin and others, but does not state who the others are.

In Mandeville v. Riggs, 2 Peters, 490, it was in substance held, that it was ground for dismissal of an appeal, where only one of several appellants was obligor in the appeal bond. Why does not the principle apply where only one of the defendants in error is named as obligee in the bond? In that case, the court said, page 490: "An objection was taken at the argument as to the regularity of the appeal, it having been claimed by all the defendants against whom the decree was made, and the appeal bond having been given by Mandeville only. The objection, if it had been material in this case, ought to have been taken by way of preliminary motion to dismiss the appeal for irregularity, on account of the failure to give the proper appeal bond."

c—Because there is no justification of the sureties in the bond, to show that the same is sufficient.

d—The penalty of the bond is not of sufficient amount to operate a supersedeas.

The bond in this case was ordered to operate a supersedeas. Record, m. p. 61.

This court, in case of Joseph Davis, Collector, v. Austin Corbin et al., 112 U. S., 36, held that the whole amount of the tax to be levied in cases of this character, was the amount in controversy, and upon which the jurisdiction of this court depended. The amount of the tax in this case is $26,000. Record, m. p. 56.

The penalty of the bond must be sufficient, where it operates a supersedeas, to cover the whole amount of the judgment.

This court so held in Catlett v. Brodie, 9 Wheat., 553, Syllabus—"The bond required by the last clause of the twenty-second section of the Judiciary Act (1 Stats. at-Large, 84) must be sufficient to secure the whole judgment, in case it should be affirmed, if the writ of error operate as a supersedeas."

There was no discretion to be exercised by the judge taking the bond to make its penalty less than the amount involved. This court so indicated in the case of Stafford v. The Union Bank of Louisiana, 16 How., 140—at page 140, it is said: "If this construction of the statute be adhered to, the amount of the bond given on the appeal must be the amount of the judgment or decree. There is no discretion to be exercised by the judge taking the bond, where the appeal or writ of error is to operate as a supersedeas. This rule was established in 1817, and it has been adhered to ever since."

The question of the sufficiency of the bond, can now, after the issuance of the writ and approval of the bond by the court below, only be determined in this court. The issuance of the writ of error gives jurisdiction to this court, and ousts that of the Circuit Court.

Again, as to the amount of this bond. It appears on its face to be insufficient as a *supersedeas bond*, in any case, in this court. The bond is for only $3,000. (Record, m. p. 62.) The amount in controversy in any cause in this court, to sustain the jurisdiction, must be at least $5,000. Consequently no *supersedeas bond* for less than $5,000 can be sufficient in this court.

We think, therefore, the bond is clearly insufficient. A good bond is a prerequisite to maintain a standing in this court. Revised Statutes, sec. 1000.

Sixth—The sixth ground for dismissal is, that a bare inspection of the record shows the writ to have been sued out upon frivolous grounds, and in direct opposition to the repeated rulings of this court: That no injunction from a State court can interfere with the process of the courts of the United States.

Riggs v. Johnson County, 6 Wall., 196.

Amy v. The Supervisors, 11 Wall., 138.

N. B. Counsel are aware that some of the grounds for dismissal, urged by them, are very technical. But it is contended their technicality is amply compensated for, and condoned by the frivolousness of the grounds upon which the writ is sued out.

UPON MOTION TO AFFIRM.

The judgment below should be affirmed. The only question raised is as to the force of an injunction from a State court to restrain the process of a court of the United States.

Riggs v. Johnson County, 6 Wall., 196.

Amy v. Supervisors, 11 Wall., 138.

It was alleged in the court below that the writ of mandamus, if issued, would be premature, because no default in the performance of the duties of collector and clerk had been shown. This question is fully discussed and disposed of in the recent case of Labette County v. The United States, ex rel. Moulton, 112 U. S., 217.

County Commissioners of the County of Cherokee v. Wilson. 109 U. S., 621.

It is submitted no plainer case for affirmance under the rule could be made. It is too plain to require argument.

Respectfully submitted, by

CHAS. P. REDMOND,

B. C. BROWN,

E. W. KIMBALL,

Counsel for Defendants in Error.